



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET, FF

Introduction

This hearing was scheduled in response to the landlords' application for Dispute Resolution, in which the landlord has applied for an Order of Possession on an Early End to Tenancy and to recover the filing fee for the cost of the application from the tenant.

The landlord stated that the application and Notice of hearing was given in person to the tenant on December 15, 2009 with a witness to this effect. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the tenant did not appear at the hearing.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to end the tenancy early; gain an Order of Possession on the basis of his application to end the tenancy early and to recover the filing fee from the tenant for the cost of this application pursuant to section 56 and 72 (1) of the *Act*.

Background and Evidence

This tenancy started on July 01, 2008 and the tenant paid a monthly rent of \$1,000.00 which was due on the 1st of each month. The tenant paid a security deposit of \$500.00 on June 17, 2008.

The landlord testifies that the tenant has caused a considerable amount of damage to the unit by smoking cigarettes and illegal substances. This smoke has also severely affected the tenants living in the upstairs portion of the property and their child has asthma which is made worse by

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the effects of the smoke. The tenant was served a breach notice concerning these issues in February and August 2009.

The landlord has strong concerns about the effect of fire on the property if the tenants continued to smoke and take illegal substances. The upstairs tenants are also concerned that the police may think it is them smoking illegal substances as the smell filters out of the basement suite.

The landlord testifies that the tenant has caused some damage to the rental suite with stains to a carpet in one room which will have to be removed and replaced.

The landlord testifies that she believes the tenant has moved from the property sometime around the weekend of December 19 or 20, 2009. However, she still seeks an early end to the tenancy in case the tenant comes back as he has paid rent up to the end of December, 2009.

Analysis

Section 56(2) of the *Act* authorizes me to end a tenancy earlier than the tenancy would end if Notice to End Tenancy were given under section 47 of the *Act* and grant an Order of Possession for the rental unit if the tenant or persons permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,

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(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I find that the landlord has provided insufficient evidence, pursuant to section 56 of the *Act*, to show that the tenant has put the landlords property at significant risk, that he has caused or is likely to cause damage to the landlords property, that he has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property or that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a Notice to End Tenancy under section 47 to take effect. Therefore, I find as the tenant has potentially abandoned the rental unit and has removed the majority of his belongings that it would not be unfair for the landlord to wait until the end of December, 2009 to see if the tenant returns to take possession of the rental unit. As the landlord does think that the tenant has abandoned the rental unit she will be able to take possession after that date according to section 5 (2)(b) of the Residential Tenancy Regulations.



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Conclusion

The landlords' application for an Early End to Tenancy is dismissed with leave to reapply in the event the tenant has not abandoned the rental unit and the landlord has grounds at that time to apply for an Early End to Tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 23, 2009.

Dispute Resolution Officer