

Decision

Dispute Codes:

ET and FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, for an early end to the tenancy, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord #1 stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing on the Tenant (initials ND) on January 29, 2009. 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.

The Landlords requested that a copy of my decision and/or order be faxed to them, however they were unable to provide a fax number at the time of the hearing. They were provided with the opportunity to send me a fax number, via fax, and they were advised I would fax the information to them upon receipt of a fax number.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to end this tenancy early, for an Order of Possession and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 56 and 72 of the *Act*.

Background and Evidence

The Landlord stated that this tenancy began on December 07, 2008. Both Landlords stated that the Tenant had signed an intent to rent form that had been submitted in evidence, however there was no intent to rent form in the evidence before me. Both Landlords acknowledged that the parties did not have a written tenancy agreement. The Landlords both stated that the monthly rent for the rental unit, as per the intent to rent form, was to be \$650.00 per month, including some utilities.

The Landlord#1 stated that he also resides in the residential complex and that his residence is separated from the Tenant's rental unit by an interior door.

The Landlord #1 stated that the Landlord served a 10 Day Notice for Unpaid Rent on the Tenants on January 12, 2009. He stated that the Tenant did not pay the outstanding rent and she did not file an Application for Dispute Resolution within five days of receiving the Notice to End Tenancy.

The Landlord #1 stated that the Landlord filed an Application for Dispute Resolution on January 27, 2009, at which time he applied for an Order of Possession for unpaid rent and for a monetary order for the unpaid rent. The dispute resolution hearing in relation to that matter is scheduled to be heard on March 11, 2009. I note that the Landlord has not served a Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*.

The Landlord #1 stated that he served the Notice of Hearing documents that relate to the hearing on March 11, 2009 on the Tenant (initials ND) at approximately 11:00 a.m. on January 28, 2009. He stated that he returned to his home at approximately 3:40 p.m. on January 28, 2009, at which time the Tenant started to yell at him through their adjoining door. He stated that she repeatedly used profanity, that she specifically used his name and that the profanity and comments were directed at him, that she stated she would not be leaving the rental unit, and that at one point she yelled, "I'm going to slit your throat, come on bring it on". The Landlord stated that the Tenant yelled for approximately forty minutes, however she never knocked on his door nor did she attempt to initiate contact.

The Landlord #1 stated that he did not respond to any of the comments made by the Tenant, nor did he ask her to be quiet. He stated that he phoned the RCMP to report the threats. He stated that the RCMP attended and spoke with the Tenant at approximately 7:40 p.m. on January 28, 2009, at which time the Tenant advised the RCMP that she was not directing her comments at the Landlord. The RCMP advised the Landlord that they were not pursuing charges against the Tenant.

When asked to provide other reasons to support the application to end the tenancy early, the Landlord #1 stated that they partied and made noise late into the evening of January 28, 2009, although the Landlord made no attempt to quiet them due to the conflict that had occurred earlier in the day.

When asked to provide additional reasons to support the application to end the tenancy early, the Landlord #1 stated that the Tenant smokes marijuana in her rental unit and that people have, on occasion, mistakenly come to his door to sell marijuana.

When asked to provide additional reasons to support the application to end the tenancy early, the Landlord #1 referred to an incident on January 28, 2008 when he attempted to enter the rental unit for an inspection after providing 24 hour notice. He stated that he was unable to access the rental unit because the Tenant was not at home at the time he wished to enter the rental unit and that the Tenant had changed the lock on her rental unit, which prevented him from entering the rental unit.

When asked to provide additional reasons to support the application to end the tenancy early, the Landlord #1 stated that the Tenant has moved her mother into the rental unit without permission from the Landlord.

When asked to provide additional reasons to support the application to end the tenancy early, the Landlord #2 stated that the Tenant and the Landlord agreed that the Tenant could use additional space in the residential complex for the month of January but that the Tenant continues to occupy that space in contravention of their agreement.

When asked to provide additional reasons to support the application to end the tenancy early, the Landlord #2 stated that the Tenant has two cats in the rental unit, although pets are not permitted.

On several occasions throughout the hearing both Landlords expressed concern that the Tenant was going to damage the rental unit or personal property belonging to the Landlords. The Landlords provided no evidence to indicate that the Tenant has, or has threatened to, damage their personal property.

After inferring that the Landlords had not established that they had grounds to end the tenancy early, both Landlords stated that the Tenant continues to disturb them every night by slamming doors and making loud noises until 2:00 a.m.

A faxed document was received from the Landlord prior to my rendering this decision. The document is largely illegible and is of no evidentiary value. The Landlord provided a fax number, to where he would like my decision faxed.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 52(2)(b) if the Act authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect.

After considering all of the evidence presented by the Landlord, I am satisfied that the Tenant unreasonably disturbed the Tenant on January 28, 2009 when she yelled profanities and other inflammatory comments for a period of 40 minutes and then continued to party and make noise throughout the evening.

In the absence of evidence to the contrary, I accept that the Tenant threatened to slit the Landlord's throat on January 28, 2009, although I find that the comment lacked authenticity as it was made while the Tenant was in her own rental unit and she made no attempts to initiate contact with the Landlord before or after making the comment. I do find that the comment unreasonably disturbed the Landlord, regardless of whether the Tenant intended to act upon it.

I find that the disturbance the Tenant caused on January 28, 2009, including the threat, is not sufficient grounds to end the tenancy early. In reaching this conclusion I was strongly influenced by the fact that there is no evidence that the Tenant made additional threatening or inflammatory comments after January 28, 2009; that the police did not consider pursuing criminal charges in the matter; and that the Tenant was not in the presence of the Landlord when she made the comments; and that there is no evidence that the Tenant has made any attempt to harm the Landlords or their property. In reaching this conclusion, I am guided by section 52(2)(b), which stipulates that a tenancy should only be ended early if 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 to take effect. In these circumstances, I am not satisfied that it would

not be reasonable to expect the Landlord to proceed in accordance with section 47 of the *Act*.

In the absence of evidence to the contrary, I accept that the Landlord has been disturbed by the Tenant's use of marijuana in the rental unit and by the fact that people have accidentally knocked on his door when trying to sell drugs. Without determining whether this disturbance, in and of itself, would be grounds to end the tenancy pursuant to section 47 of the *Act*, I find that smoking marijuana or having someone occasionally come to the Landlord's door for the purposes of selling marijuana is not sufficient grounds to end a tenancy early. In reaching this conclusion, I am guided by section 52(2)(b), which stipulates that a tenancy should only be ended early if 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 to take effect. In these circumstances, I am not satisfied that it would not be reasonable to expect the Landlord to proceed in accordance with section 47 of the *Act*.

I find that the Landlords' statements that the Tenant causes a disturbance every night until 2:00 a.m. lack credibility. In reaching this conclusion I was strongly influenced by the fact that they did not introduce this evidence until after I indicated they had not established grounds to end the tenancy early, even though they had been prompted on several occasions to provide more evidence in support of the application. As I find the evidence regarding repetitive disturbances to lack credibility, I disregarded this evidence when rendering this decision.

I find that the Landlords submitted insufficient evidence to establish that the Tenant poses a significant risk to their property, and I find their fears that the Tenant will damage their property are not grounds to end this tenancy early.

I find that changing the locks without authority is not cause to end a tenancy early pursuant to section 56(2)(a) of the *Act*. On this basis, I will not be considering the evidence regarding the lock when rendering a decision on this matter.

I find that having one additional occupant in the rental unit is not cause to end a tenancy early pursuant to section 56(2)(a) of the *Act*. On this basis, I will not be considering the evidence regarding the additional occupant when rendering a decision on this matter.

I find that the agreement regarding the tenant temporarily occupying additional space in the rental unit is not cause to end a tenancy early pursuant to section 56(2)(a) of the *Act*. On this basis, I will not be considering the evidence regarding the additional space when rendering a decision on this matter.

I find that having unauthorized pets in the rental unit is not cause to end a tenancy early pursuant to section 56(2)(a) of the *Act*. On this basis, I will not be considering the evidence regarding the pets when rendering a decision on this matter.

Conclusion

I find that the Landlords have not established grounds to end this tenancy early, pursuant to section 56 of the Act. On this basis I hereby dismiss the Landlords' application to end the tenancy early and for an Order of Possession.

As the Landlords' application has been without merit, I hereby dismiss their application for compensation to recover the filing fee for the cost of this Application for Dispute Resolution.

Date of Decision: February 06, 2009.
