



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ET

Introduction

This matter dealt with an application by the Landlord for an Order ending the tenancy earlier than it would end if the Landlord was required to serve the Tenants with a One Month Notice to End Tenancy for Cause and wait for the applicable Notice period to expire.

The Landlord said she served the Tenants in person on August 10, 2010 with a copy of the Application, Notice of Hearing and her evidence package (the “hearing package”). Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants’ absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy early?

Background and Evidence

This tenancy started on or about June 1, 2010. The rental property is occupied by the Landlord’s daughter and son who reside in separate units on the lower floor, by the Tenants who reside on the main floor and by the Landlord who resides next door (in an attached duplex).

The Landlord said that when she advertised the property for rent, she made it clear that one of the occupants of the rental property (her grandchild) had an allergy to smoke and as a result, the Tenants would have to smoke on a covered patio. The Landlord said that the Tenants did not confine their smoking to the covered patio area but smoked throughout the rental property leaving cigarette butts everywhere. The Landlord said she spoke to the Tenants about their smoking but they would not listen to her and said they could smoke wherever they wanted. The Landlord also said that her daughter also put signs up on the rental property asking them not to smoke within 3 meters of the building but they disregarded those signs as well.

The Landlord claimed that as a result of the Tenants’ failure to comply with her requests, her daughter had to keep her windows shut and her grandson had to be prescribed an inhaler on June 11, 2010 although the copy of the prescription she provided is dated August 4, 2010 and states that the patient has “no known allergies.”

The Landlord said that on July 29, 2010, the Tenants had a party and permitted guests to smoke marijuana on the rental property and as a result the police were contacted. The Landlord said the police gave the Tenants a warning. As a result, of the Tenants' failure to comply with her requests not to smoke other than in a designated area of the rental property, the Landlord said she served the Tenants with a One Month Notice to End Tenancy for Cause on July 30, 2010.

The Landlord said that after she served the Notice on the Tenants, "things broke down." The Tenants got into heated arguments with the Landlord and her daughter over the use of the backyard area. The Landlord admitted that she had been taking pictures of the Tenants smoking in different areas of the rental property but said the Tenants accused her of taking pictures of their children. On August 1, 2010, the Landlord said one of the Tenants (S.D.) attacked her and grabbed her camera. The Landlord submitted a DVD recording of this incident. During this "assault", the Landlord claimed that one of her fingernails was partially torn off.

In their written submissions and DVD recording(s), the Tenants claim that the Landlord was harassing them and their children by taking pictures of their children playing in the back yard, interfering with their use of the back yard area, turning off their water to prevent them from using the laundry facilities and so forth. The Tenants also claim that on August 1, 2010, S.D. tried to grab the Landlord's camera from her when she refused to comply with their many requests that she not photograph their children. The Tenants claimed that the Landlord pulled S.D.'s hair and that her daughter bit S.D. to get the camera back. The Landlord denied that her daughter bit S.D. but admitted that she pulled S.D.'s hair.

On August 2, 2010, the Landlord said a male guest of the Tenants' threatened herself and her daughter and sprayed her with a garden hose. The copy of the DVD recording provided by the Landlord shows the male guest spraying the Landlord and the Landlord repeatedly saying "bring it on buddy, I'm not afraid of water, unlike the Tenants, I like to bathe." The male guest can also be heard saying "wait until you wake up tomorrow and you'll have {can't make out} in your back yard." In general, the Landlord said the police have been contacted 6 times during the tenancy about the alleged assaults and excessive noise from the Tenants' parties.

Analysis

Section 56 of the Act says that a Landlord may apply to end a tenancy earlier than it would end if a Notice to End tenancy for Cause under s. 47 of the Act had to be given. In order to succeed on such an application, the Landlord must show that one or more of the grounds set out in subsection 56(2) of the Act exists and that it would be unreasonable or unfair to have to wait for a Notice to End Tenancy under s. 47 of the

Act to take effect. Consequently, in order to end a tenancy early, the Landlord must show that there is an imminent threat of danger to the person or damage to property.

Based on the evidence of both Parties, I find that the grounds do exist that warrant ending the tenancy early. Although I find that the Landlord bears some responsibility for provoking the Tenants, I also find that one of the Tenants actions were unacceptable and constitute a significant interference with the Landlord and another occupant of the rental property. In particular, I find that S.D. did assault the Landlord on August 1, 2010. Based on the DVD recording submitted by the Landlord, it is clear that S.D. was in a state of rage and did attack the Landlord in an attempt to grab her camera. I also find based on the Landlord's evidence and DVD recording that one of the Tenants' guests threatened the Landlord and her daughter with physical harm and property damage on August 2, 2010.

In the circumstances, where there is ongoing animosity between the Parties who reside in the same rental property and given that there have been acts of violence and threats of violence by the Tenants and/or their guests, I find that it would be unreasonable to wait for a Notice to End Tenancy under s. 47 to take effect. The Landlord requested and I find that she is entitled pursuant to s. 56 of the Act to an Order of Possession to take effect on August 29, 2010.

Conclusion

An Order of Possession to take effect on August 29, 2010 has been issued to the Landlord. The Order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia.

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: August 24, 2010.

Dispute Resolution Officer