

Decision

Dispute Codes: ET

Introduction

This application was brought by landlord on July 25, 2011 seeking an Order of Possession to end the tenancy early under section 49 of the *Act*. This section permits such applications in situations where it would be unreasonable for the landlord to wait for an order under section 40 of the Act which requires a Notice to End Tenancy served a minimum of one month in advance of the end of tenancy date.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession under the stricter requirements of section 49 of the *Act* and, if so, the effective date of such order.

Background and Evidence

This tenancy, involving a site for the tenant's fifth-wheel trailer on the landlord's farm, began on May 2, 2011. Rent is \$375 per month which, according to the landlord, is in addition to employment duties contracted to be performed by the tenant. The tenant submits that it is a rental agreement not related to an employment agreement.

Neither party submitted a copy of the rental agreement on the misapprehension that it would be transferred from another file awaiting hearing on August 19, 2011; however, each applicant file is assigned and treated individually and evidence is not automatically transferred from one file to another. In any event, the agreement is not essential to the present hearing which must be confined to the single issue pertaining to the request for an early end to tenancy.

The present application arises from an incident on Friday, July 22, 2011 between the applicant landlord and a guest of the tenant. In that incident, the landlord had been

retrieving a quantity of cedar siding and saw horses from an area adjacent to the trailer. There was also a ladder that had been loaned to the tenant but not returned.

The landlord stated she noted that the tenant and her guest were using a couple of pieces of the cedar which she advised them had been purchased and were needed for a specific project. As she was removing the pieces of cedar which the tenants appeared to be using, she was accosted by the male guest of the tenant who attempted to stop her from taking the wood. A tug-or-war ensued and the landlord stated she was pushed. Police were called.

The tenant's guest submits that the landlord precipitated the exchange by attending at the site without notice and the landlord was of the view that notice was not indicated as she was simply removing her property taken by the tenant without consent. The tenant stated that she believed the incident was in retaliation for her having served the landlord with the Notice of Hearing to set aside the Notice to End Tenancy which is the subject of the pending hearing.

The landlord's husband arrived at the scene and completed removal of the property but did not witness the physical contact between the parties.

While each of the parties stated that the other was acting aggressively and in a hostile manner, another associate of the landlord who had been assisting her stated in a written submission that the landlord had been calm throughout, and had offered the tenant use of some other wood that had not been earmarked for her project.

The guest has now left the property and gave evidence that he will not be returning.

The landlord's husband expressed the view that an early Order of Possession would be appropriate as he has concern for retribution and dreads living in close proximity to a hostile tenant.

Analysis

Section 49(2)(a)(i) of the *Act* makes provision for a landlord to apply for an early end to a tenancy in a situation in which the tenant or a person permitted on the property by the tenant has “significantly interfered with or unreasonably disturbedthe landlord...”

This provision is also included under section 40(1)(c)(i) of the *Act* which sets out provisions under which landlord's may issue a Notice to End Tenancy for cause.

However, as it does not required service of a Notice, and because such applications contemplate potentially more critical issues, the section 49 provision is qualified by section 49(2)(b) which limits the early end provision to matters in which, “it would be unreasonable, or unfair to the landlord to wait for a notice to end the tenancy under section 40...to take effect.”

Currently, three Notices to End Tenancy have been served and a hearing has been set for one on August 19, 2011. The offending guest has left the property and will not be returning. The landlord and tenant are discussing a monetary incentive to assist the tenant's rent differential until the more expensive vacation season is over if she moves by mutual consent so a settlement remains possible.

Therefore, I find that the urgency of this matter has receded somewhat since the application was made and that it would not be unreasonable for the landlord to await the due process under way under section 40.

Therefore, I decline to grant the Order of Possession on the current application.

Conclusion

The landlord's request for an Order of Possession under section 49 of the *Act* is denied.

August 5, 2011