



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened upon the application of the landlord seeking an Early End of Tenancy pursuant to Section 56 and recover of the filing fee paid for this application.

Both parties appeared and gave evidence under oath.

Issue

Has the landlord met the burden of proving that he should be allowed to end this tenancy early without giving notice as required by the Act? And is the landlord entitled to recover the filing fee paid to make this application.

Background

The tenants moved into the rental building in June 2012 and into this particular unit in July 2012.

In the details of dispute the landlord says the building manager (AK) was assaulted by the tenant and that the tenants caused malicious damages to the main entry door leading to the telephone, cable, TV and Hydro room.

To support these claims the landlord submitted a business card from an RCMP officer with a police file number on the card. The landlord says charges have been laid or will be laid. The landlord also submitted letters from the building manager AK who claims to have been assaulted by the tenant and another letter from both the building maintenance man and another party. None of these persons attended the hearing. AK is named as landlord in this application however it was submitted that she was at a funeral and unable to attend the hearing. The landlord was therefore being represented by GL.

The building maintenance man, PB, appeared at this hearing and testified that he was present and witnessed AK being assaulted by the male tenant with a hammer and pliers.

The male tenant objected. The tenant admits he was upset because he believed his hydro had been shut off. He had BC Hydro on his phone and they were advising him that they had not disconnected his services. The tenant testified that he was asking AK to open the door to the hydro room because he believed that the landlord had cut off his services and he wanted to investigate the matter himself. He agrees that he was angry and yelling but he did not assault AK. Further, the tenant says that contrary to PB's testimony no one was present when this conversation took place between himself and AK.

PB then admitted that he was in the office on another floor when the altercation took place. As such he did not actually see or hear the altercation but he says that AK was very frightened when she came into the office and she told him what had happened. The building maintenance man says the tenant is a "Big Boss" and he is very threatening. The building maintenance man says he fears for the safety of his family.

The landlord's representative GL says he is very concerned for the safety of the building manager AK. GL says AK is 80 years old and he is afraid she will get into a fight with the tenant and get hurt. GL expressed his concern several times regarding the potential for a fight breaking out between the tenant and AK.

The tenant testified that he never assaulted AK and that no charges have been pressed or contemplated. The tenants scoffed at the landlord's comments that he is concerned that they would assault an 80 year old woman. The tenant says they fear for their own safety and says that it is true that the police were called to the rental building but this was in response to the building maintenance man and another man threatening the tenant with a taser gun and a pipe.

The Law

Section 56 of the Act says that a landlord may make an application for dispute resolution to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under, section 47 [landlord's notice: cause] or 57.41 [notice to end tenancy: tenant's needs], and

- (b) granting the landlord an order of possession in respect of the rental unit.

And that the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application, either that:

the tenant or a person permitted on the residential property by the tenant has done any of the following:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- Seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, and

it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] or 57.41 [notice to end tenancy: tenant's needs] to take effect.

Findings

The testimony of the landlord and the tenant is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Based on the testimony of both parties I find that the landlord has failed to prove that any of the circumstances described above exist. Further, I am dubious as to the credibility of the landlord and/or his building maintenance man who gave sworn testimony that he witnessed an assault that he later admitted he did not witness at all. For this reason I prefer the tenants' version of events.

Having been unsuccessful in this application for an early end of tenancy I find that the landlord is not entitled to recover the filing fee paid for this application.

Conclusion

The landlord's applications are dismissed. This tenancy shall continue as though no notice had been served.

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: September 05, 2012.

Residential Tenancy Branch