



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NG & SMITH REALTY SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking to end the tenancy early without notice.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Issue

With respect to the landlord's application to terminate the tenancy without notice under section 56(1), I find that the landlord made this application on October 2, 2013 and it was scheduled to be heard today, on October 24, 2013. However, I find that there was a previous hearing held on October 15, 2013, on the *tenant's* application to deal with some other matters under dispute in the tenancy.

At that hearing, the parties entered into a mutual agreement with respect to these other matters.

Earlier, on October 1, 2013, the landlord had issued a One-Month Notice to End Tenancy for Cause. Terminating the tenancy pursuant to this Notice was not discussed nor dealt with at the October 15, 2013 hearing nor was the issue of terminating the tenancy without Notice because the application being heard on October 15, 2013, was only to determine the *tenant's* application. Therefore, only the tenant's application was heard and the parties made their mutual agreement resolving tenancy matters brought forth by the tenant.

However, the landlord's application seeking to end the tenancy without Notice had already been filed and scheduled to be heard today.

Section 56(1) of the Act permits a landlord to terminate a tenancy without Notice in some specific circumstances. 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*], and
- (b) granting the landlord an order of possession in respect of the rental unit.

Section 56(2) gives the criteria under which the arbitrator may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession. This is allowed only if the landlord proves that:

- (a)** the tenant or a person 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,
 - (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

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. (My emphasis).

(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.

Given that the parties already entered into a mutual agreement on October 15, 2013, that resolved some, or possibly all, of the other matters under dispute in this tenancy, I find that there is not sufficient evidence to support terminating this tenancy under section 56(1) of the Act.

Accordingly, I find that the landlord's application must be dismissed. The tenant testified that the parties are discussing a date upon which to mutually end the tenancy.

Based on the evidence before me, I hereby dismiss the application without leave

Conclusion

The landlord is not successful in the application and it is dismissed without leave to reapply.

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: October 24, 2013

Residential Tenancy Branch