



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

On August 12, 2016, the Landlord submitted an Application for Dispute Resolution for an early end of tenancy and to recover the cost of the filing fee. The matter was scheduled as teleconference hearing. The Landlord and the Tenant attended the hearing.

Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Tenant testified that she received a package of evidence containing 35 pages from the Landlord on September 1, 2016. She testified that she went to the post office to pick up the evidence. The Tenant testified that she is supposed to have evidence at least two weeks before a hearing. She testified that she has been sick and is not working right now. She testified that she never received a notice to end the tenancy. I note that in an early end of tenancy application the Landlord is not required to issue a Notice to End tenancy.

The Landlord testified that she sent her evidence to the Tenant using Canada Post Registered Mail. She testified that she sent 35 pages to the Tenant on August 19, 2016. The Landlord provided the Canada Post Registered Mail tracking number as proof of service.

The Residential Tenancy Branch Rules of Procedure 3.2 require a Landlord who is seeking an early end to the tenancy to submit all evidence with the Application for Dispute Resolution. All the evidence to be relied on at the hearing must be served on the respondent with the hearing package. Rule 3.14 requires that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

Section 90 of the *Act* states that a document given or served in accordance with section 88 is deemed to be received on the 5th day after it is mailed.

Section 56 of the Act states that if an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

While I note that the Landlord did not serve her evidence in compliance with section 3.2 of the Rules of Procedure, I find that the purpose of rule 3.2 is to ensure that a Tenant has enough time to consider evidence before attending a hearing dealing with an early end of tenancy. Due to the serious nature of an Application requesting an early end of tenancy, these Applications are processed as a priority and hearings are scheduled as soon as possible.

Pursuant to section 90 of the Act, I find that the Tenant is deemed to have received the documents on August 24, 2016, which is 17 days prior to the hearing. I find that the Tenant had enough time to review and consider the Landlord's evidence prior to the hearing. The Landlord is seeking an early end of tenancy due to allegations of an immediate threat to life and safety. As I have found that the Tenant has had sufficient time to consider the Landlord's evidence, I am not satisfied that the Tenant's explanation for not providing a written response is sufficient to justify an adjournment of the hearing to allow the Tenant more time to prepare or respond in writing.

The hearing proceeded and the Tenant was given the opportunity to provide solemnly affirmed testimony in response to the Landlords solemnly affirmed testimony and evidence.

Issues to be Decided

Does the Landlord have cause to end the tenancy early?

Background and Evidence

The parties testified that the tenancy began on April 1, 2016. Rent in the amount of \$1,350.00 is payable on the first of each month. The Tenant paid a \$675.00 security deposit to the Landlord.

The Landlord testified that on August 11, 2016, she received a letter dated August 9, 2016, from the strata corporation of the residential property. The letter indicates a chair was thrown off the balcony of unit #2202 by the residents. The letter states that such behaviour is unacceptable and will not be tolerated and poses a huge safety risk to other residents and may cause undue damage to common property.

The Landlord testified that the Tenant's unit faces the street and that there are pedestrians and businesses located directly below the Tenant's balcony. She submits that the building lobby is directly below the Tenants balcony. The Landlord testified that she is concerned that the Tenants actions could kill someone.

The Landlord testified that she spoke to the building manager who told her that it was the occupant in unit 2202 that threw the chair. The Landlord testified that even if the Tenant was not the person who threw the chair, the Tenant is responsible for the unit and the actions of any guest.

The Landlord testified that she spoke to other residents of the building and received written statements of what they observed. The Landlord provided documentary evidence of the written statements from two occupants of the residential property.

A letter dated August 13, 2016, from a resident who indicates they are a neighbour, states that ever since April of this year when the Tenant moved in there has always been unexplained screaming and yelling coming from her unit late into the night. On the morning of Saturday July 23, 2016, the resident heard banging, screaming and yelling coming from the subject rental unit. It sounded like the Tenant was outside on the patio so the resident looked outside and down and observed a black chair thrown out from her balcony. The chair looked like a black patio chair with nylon material backing and steel legs. The resident states that items like that thrown from a balcony at this height can kill someone.

A letter dated August 13, 2016, from a resident who identifies as a neighbour of unit 2202, states that at approximately 11:15 AM on July 23, 2016, he/she saw a large black thing free falling outside the balcony. It looked like a chair. The letter indicates the resident immediately went to the balcony and heard a woman screaming and saying inappropriate language really really loud. The resident states that their assumption is that the chair came from the problematic resident in the suite directly above.

The Landlord also testified that the Tenant has engaged in altercations and aggressive behaviour with other residents prior the incident where the chair was thrown from the balcony. The Landlord testified that the Tenant was involved in an altercation in the hallway of the rental premises where she caused damage to a door.

The Landlord provided documentary evidence of an email sent to the building manager on May 21, 2016 from unit 2201 that indicates the Tenant tortures her dog almost every night and makes a lot of noise, damages people's property and threatens people using inappropriate language.

The Landlord provided a letter dated June 10, 2016, from the strata corporation of the residential property stating the Tenant caused a disturbance and was involved in a confrontation with a neighbour causing damage to their suite door.

The Landlord also provided documentary evidence of emails and text messages between the parties to show that the Tenant insults people, utters threats, and uses inappropriate language.

A document from the Landlord shows an email exchange between the parties dated April 28, and April 29, that contains language from the Tenant that is too insulting and offensive to reproduce in this decision.

A document from the Landlord shows a text message exchange between the parties where the Tenant states:

*“you’re lucky I didn’t fu**in snap ur face in half after you would not leave my property after being told to leave up to 10 times”*

The Landlord submits that prior to the chair incident she tried to deal with the issues by offering the Tenant a free month rent if she would pay the strata fines and move out without any further drama.

The Landlord seeks an early end to the tenancy and requests an order of possession.

In response to the Landlord’s testimony and evidence, the Tenant testified that she told the Landlord that she did not know anything about the chair being thrown off the balcony. She submits that the Landlord was not angry about the chair, but was angry about the \$200.00 strata fine.

The Tenant testified that she lives 22 floors up, and her balcony faces the road and that pedestrians walk directly below. She testified that she was not working at the time but does not remember if she was at home on July 23, 2016. The Tenant testified that she did not have anyone staying with her in the unit on July 23, 2016. The Tenant testified that she did not throw the chair off the balcony and submits that maybe the witness to the chair throwing miscounted floors.

The Tenant submits that it was other people that made a scene and left a mess and scratch mark on another resident’s door. The Tenant testified she refused to pay the fine and points out there is no video surveillance in the hallway showing who did it.

The Tenant submits that she has no idea what the Landlord is talking about regarding threats to other residents.

The Tenant acknowledged that she did sent text messages and emails back and forth with the Landlord.

Analysis

Section 56 of the *Act* states that a Landlord may make an application for dispute resolution to request an order to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 and granting the

Landlord an order of possession in respect of the rental unit. If an order is made under this section, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, 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 interest 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,
- 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
- 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 or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

Based on the evidence above, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant is responsible for the chair that was thrown from the balcony.

I find that the Tenant wrote offensive and threatening emails and texts to the Landlord. I prefer the Landlord's evidence regarding the chair over the Tenants testimony and I assign it more weight. The offensive and threatening emails and texts from the Tenant to the Landlord are consistent with the allegations of offensive language that was reportedly over-heard prior to the chair being thrown off the Tenants balcony. I accept the witness statement that the witness heard banging, screaming and yelling coming from the Tenants unit. The witness looked outside and down and observed a black chair thrown out from the Tenants balcony. I find that the witness reports are internally consistent and I consider the reports to be reliable.

I find that the Tenant 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 and has seriously jeopardized the health or safety of other renters in the building

Therefore I am ordering that the tenancy will end.

I find that the Landlord is entitled to an order of possession, effective one day after service on the Tenant pursuant to section 56 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order that the Landlord can retain \$100.00 from the Tenants security deposit in satisfaction of the application fee.

Conclusion

The Tenant 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 and has seriously jeopardized the health or safety of other occupants and the Landlord.

The tenancy is ending.

The Landlord is granted an order of possession effective after one (1) day service on the Tenant.

The Landlord can retain \$100.00 from the Tenants security deposit in satisfaction of the application fee.

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 12, 2016

Residential Tenancy Branch