



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Code: ET

Introduction:

This hearing dealt with an application by the landlord for an early end to this tenancy pursuant to section 56 of the *Act*. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

The landlord had provided some evidence from a restoration company which was served on the tenant and the Residential Tenancy Branch. Unfortunately, this evidence was not on the file at the time of this hearing. I allowed the landlord to fax me this evidence and I have considered this evidence as part of this decision.

Issue to be Determined:

Are there sufficient grounds to grant the landlord immediate possession of this rental unit pursuant to section 56 of the *Act*?

Background and Evidence:

This tenancy began on October 1, 2008 for the monthly rent of \$850.00 and a security deposit of \$425.00. The tenancy is for a fixed term ending on September 30, 2009.

On February 2, 2009 there was a flood in the rental unit which caused significant flooding of sewage material throughout the unit. The landlord had a restoration company inspect the suite the next day after it was cleaned up. In the letter of February 9, 2009 the restoration company provided the following to the landlord:

"I visited this residence February 3, 2009 at the request of your Insurance Company in regards to Category 3 water damage (sewer backup) the entire immediate living area Master bedroom, bathroom and kitchen area's in need immediate remediation, i.e. Removing all flooring toiletries and kitchen cabinets and removing drywall to accomplish this, as this will turn into a serious health hazard. In order for this remediation to take place your tenants have to relocate to a different residence. This remediation is of most importance that the emergency repairs start immediately as this will be a growing ground for mould growth. Your tenant will have no place to cook or any toilet facilities."

Based on this information the landlord requested that the tenant vacate immediately. The landlord offered to refund the tenant for a pro-rated portion of the month's rent, the return of the security deposit and offered to move the tenant's possessions.

The landlord is under the impression that the tenant is wilfully refusing to vacate. It is the position of the landlord that as a result of the tenant refusing to vacate her lawful interest in the property and her rights as a landlord is in significant jeopardy. The landlord relies on the evidence of the remediation company that the situation is hazardous and will result in mould growing and further damaging the rental unit.

The tenant stated that she has been attempting to find new accommodations and argued that the landlord has not provided her enough assistance in finding a new place to live. The tenant argued that she is willing to leave immediately; however, stated that the landlord should be responsible for short term living accommodation and for storing her possessions.

The landlord submitted that she thought it was more reasonable for the tenant to permanently move, rather than to move her belongings into storage and back out of storage.

Analysis:

Section 56 of the *Act* allows for a tenancy to be ended early, without having to serve a one month Notice to End Tenancy, in exceptional circumstances where it is shown that there is cause to end the tenancy and it has been established that it would be unfair or unreasonable to wait for a one month Notice to End Tenancy to take effect.

I have no evidence before me establishing that the landlord has cause to end this tenancy. The landlord has argued that her property and her lawful interests are jeopardized; however, this is due to the flood and not due to the tenant. There has been no evidence presented before me showing or establishing that the tenant was responsible or negligent for the flood. Therefore, the landlord's concerns are due to damage caused by the event. This is not grounds to end the tenancy under section 56 of the *Act*.

Further, the landlord has not filed an application to end the tenancy pursuant to section 56.1 of the *Act*. This section allows for a tenancy to end on the basis that the rental unit is uninhabitable.

Rather, the issue is that there is significant damage which due to the nature of the flood is potentially a health hazard. In this case both parties are inconvenienced and can potentially experience loss. In this situation the landlord is responsible for assisting the tenant in finding new (permanent or temporary) accommodations. Although the landlord seeks immediate vacate possession of the rental unit she has not provided any financial compensation to the tenant to vacate immediately. The landlord is still obligated to fulfill the tenancy agreement and if she cannot then she is financially liable to the tenant for reasonable, alternative accommodations and storage of the tenant's possessions. The tenant is obligated to assist the landlord and to mitigate any of the potential costs.

The tenant has confirmed that she is seeking new accommodations and only requires sufficient time to do so. I find this to be reasonable. It is open to the parties to reach an agreement to mutually end the tenancy.

It is clear to me from the evidence from the remediation company that the rental unit requires immediate emergency repairs. Both the landlord and the tenant should be making every effort to work together to resolve this problem. The parties can either expend their effort to finding the tenant new permanent living accommodation or the landlord can assist the tenant in finding new temporary living accommodation until the repairs are completed. Both parties open themselves to liability if they do not mitigate the potential losses of the other party.

Conclusion:

I dismiss the landlord's application. I find that the landlord has failed to meet the standard of proof required to end this tenancy pursuant to section 56 of the *Act*. While the parties would not agree on a mutual end to this tenancy I strongly recommend that the tenant vacate not later than February 28, 2009 given the nature of the flooding and potential increasing hazard of the cite.

Dated February 18, 2009.

Dispute Resolution Officer