



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, ET and FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession on the basis of an early end to the tenancy, for an Order of Possession for Cause, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Landlord amended her original Application for Dispute Resolution, at which time she withdrew her application for an Order of Possession for Cause.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution, the Notice of Hearing, and evidence were sent to the Tenant, via registered mail, at the rental unit, on October 14, 2011. The Landlord submitted Canada Post documentation that corroborates this statement. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession on the basis of an early end to this tenancy and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 56 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord is seeking to end this tenancy early on the basis of information provided to her by the occupant living in the upper rental unit. The Landlord submitted an email from the occupant living in the upper rental unit, in which the occupant reported that on October 09, 2011 they noted smoke coming from the rental unit; they were unable to access the rental unit by knocking on the door; they entered the rental unit thru an open window; they located the Tenant's guest asleep on the couch and a pot burning on the stove; they had difficulty arousing the guest; they determined the guest was highly intoxicated; they determined the Tenant was not at home; after evacuating the guest from the unit the guest returned to the rental unit; they again evacuated the guest from the rental unit and convinced him to leave the rental unit.

The Landlord stated that she has not viewed the rental unit to determine the extent of the damage and that the Tenant is not responding to her attempts to communicate with him. She stated that she is not aware of similar incidents which have jeopardized the security of the residential complex.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and that the landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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.

After considering all of the evidence presented by the Landlord and in the absence of evidence to the contrary, I am satisfied that the Tenant's guest put the residential property at risk on October 09, 2011 when he left a pot burning on the stove. I have not

determined whether this incident is grounds to end this tenancy pursuant to section 47 of the *Act*, as that matter is not before me at these proceedings.

I find that the incident is not sufficient grounds to end the tenancy early. In reaching this conclusion I was strongly influenced by the fact that there is no evidence that the guest continues to stay overnight at the rental unit unattended or that the Tenant has a history of similar incidents. In reaching this conclusion, I am guided by section 56(2)(b), which stipulates that a tenancy should only be ended early if 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. In these circumstances, I am not satisfied that it would not be reasonable to expect the Landlord to proceed in accordance with section 47 of the *Act*, given that the person responsible for the incident does not reside at the rental unit.

Conclusion

I find that the Landlord has not established grounds to end this tenancy early, pursuant to section 56 of the *Act*. On this basis I hereby dismiss the Landlords' application to end the tenancy early and for an Order of Possession. As the Landlord's application has been without merit, I hereby dismiss the application for compensation to recover the filing fee for the cost of this Application for Dispute Resolution.

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, 2011.

Residential Tenancy Branch