



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET

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 and for an early end to the tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant allegedly submitted documents to the Residential Tenancy Branch on September 21, 2012 however they were not available to me at the time of the hearing. As the Tenant received notice of this hearing on September 15, 2012 and the Landlord has applied for an early end to the tenancy, which is an urgent matter, I did not adjourn the hearing to provide the Tenant with an opportunity to introduce this evidence at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to end this tenancy early and to an Order of Possession, pursuant to section 56 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2012. The Landlord stated that she wishes to end this tenancy early because there have been two fires in the unit since the start of this tenancy, which endangers the safety of other occupants living in the residential complex.

The Landlord and the Tenant agree that on September 04, 2012 the female Tenant reported that there had been a fire in the rental unit and that the kitchen counter had been burned.

The female Tenant stated that she had been cooking; that once she finished cooking she turned off the stove element she had been using; that the dial indicated the element was in the "off" position; that the stove element had not actually been turned off; that she left the pot on the element; that when she returned to the kitchen she found the pot on fire; and that she removed the pot from the stove and dropped it onto the counter, which damaged the counter. She stated that she intends to pay to repair the damaged counter.

The Landlord stated that she checked all of the dials on the stove prior to the start of this tenancy and found them to be in good working order; that on September 02, 2012 or September 03, 2012 the Tenant informed her that one of the dials on the stove was not working properly; that she directed the Tenant not to use that element until she has had it inspected by a technician; and that she has not yet had the dials inspected.

The female Tenant stated that she was not aware of the faulty dial until the day of the fire so she could not have reported it prior to September 04, 2012.

The Landlord and the Tenant agree that at approximately 9 a.m. on September 08, 2012 the female Tenant reported that there had been a fire in the rental unit and that the stove hood had been burned. The Landlord stated that the Tenant living in the upper rental unit reported the smell of smoke to the Landlord shortly before the incident was reported by the female Tenant. The parties agree that the Tenant has since replaced the hood fan that was damaged by the fire and that the Tenant has painted the ceiling.

The male Tenant stated that at approximately 2 a.m. he was cooking bacon; that he left the bacon unattended for a short period of time; and that when he returned to the kitchen he found the pan on fire. He stated that if there had been a functioning smoke detector in the kitchen the incident would likely have been prevented, as he would have been alerted to the smoke prior to the fire starting. He stated there was a smoke detector sitting on a window sill in the kitchen but it was not activated by the smoke or the fire. He does not believe the battery was properly installed in the smoke detector.

The Landlord stated that the smoke detector on the window sill was functional, although she does not know whether it was activated by the smoke on September 08, 2012. She stated that the smoke detector was located on the window sill because that location was close to the stove and that it has since been attached to the ceiling near the stove.

The female Tenant stated that her son woke her up and she helped him put out the fire.

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) of 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.

I find that the Landlord has submitted insufficient evidence to establish that this tenancy should end early on the basis of the cooking accident that occurred on September 04, 2012. In reaching this conclusion I find that the Landlord has submitted no evidence to show that the stove was in good working order on September 04, 2012 or to refute the Tenant's claim that the fire was started as the result of a faulty element switch. Although I have no reason to discount the Landlord's testimony that the stove functioned properly prior to the start of the tenancy, I find it entirely possible that the element switch failed after the start of the tenancy. I specifically note that the Landlord

has not had the stove inspected since the fire so she cannot say whether the switch is currently functioning properly. As the Landlord has failed to establish that the incident on September 04, 2012 was not the result of a deficiency with the rental unit, I find that it would not be reasonable to end the tenancy early as a result of this incident.

I specifically note that the Landlord has submitted insufficient evidence to show that the Tenant was aware of the faulty switch prior to the fire. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant reported the problem prior to the fire or to refute the female Tenant's testimony that she did not report the problem prior to the fire.

I find that the Landlord has submitted insufficient evidence to establish that this tenancy should end early on the basis of the cooking accident that occurred on September 08, 2012. In reaching this conclusion I find that the Landlord has submitted no evidence to corroborate her claim that the smoke detector was in good working order on September 08, 2012 or to refute the Tenant's claim that the smoke detector was not working. Given that smoke detectors are not designed to sit on window sills, I find it possible that the location of the smoke detector may have affected its functionality.

While the Tenant was clearly responsible for this incident, cooking accidents do happen. I find that this incident would likely have been relatively minor if the smoke detector had functioned properly, as the Tenant could have prevented the situation from escalating. As the Landlord has failed to establish that the incident on September 08, 2012 was not exacerbated by a deficiency with the rental unit, I find that it would not be reasonable to end the tenancy early as a result of this incident. I specifically note that the smoke detector has now been properly installed on the ceiling which greatly enhances the safety of all occupants.

Conclusion

I find that the Landlords have not established grounds to end this tenancy early, pursuant to section 56 of the *Act*. On this basis I hereby dismiss the Landlord's application to end the tenancy early and for an Order of Possession.

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 24, 2012.

Residential Tenancy Branch