



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there was no issue with service. The parties confirmed that the tenant received the landlord's dispute resolution package and that both parties were served their respective evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served the tenant with the application package and the parties were served with their respective evidence packages.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began on January 1, 2017 and is scheduled to end on December 31, 2017. The monthly rent is \$1,200.00.

The rental unit is one of the basement suites of a fourplex complex. The other units in the complex are vacant as of the date of the hearing.

The landlord testified that on March 12, 2017 when he was inspecting one of the other units in the rental building he detected a strong smoky scent. He discovered that the source of the smell was the tenant's rental unit and was advised by her that she was burning sage for smudging. The landlord testified that the smell caused by the smudging lingers throughout the rental building and caused him dizziness and nausea.

The landlord said that he has attempted to work with the tenant to minimize the effect of the smudging in the rental building but she has been uncooperative. The landlord said that because the rental unit includes wood panel walls and carpeting he is concerned that the smudging is a fire hazard. The landlord testified that he has seen ash on the floor of the rental unit and that smudging uses an open dish. The landlord said that the smoke from the smudging caused him considerable dizziness and that the pungent smell is detectable throughout the rental building for days.

The landlord's witness provided testimony that he could detect the odor from the other units of the rental building. The landlord provided a written statement from a second witness saying that the smell of smoke was detectable in the rental building. The witness characterized the smell as "the odor of something burnt, similar to marijuana".

The tenant testified that the smudging is performed in accordance with tradition and there is little fire hazard caused by the burning. The tenant said that while smudging is meant to be a regular part of life her schedule only allows her to smudge periodically.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that 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 interests 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;
- 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;
- engaged in illegal activity that 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, the tenant 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.

Based on the testimony of both parties, the landlord's witness and my review of the written evidence, I find that the landlord has failed to prove that any of the circumstances described above exist such that it would be unreasonable or unfair to the landlord or other tenants to serve the tenant with a notice to end tenancy under section 47 of the *Act* and wait for that notice to take effect.

The parties have provided testimony that the tenant's activities in the rental unit create smoke and accompanying scents. The landlord testified that the walls of the rental unit are wood panels and the floors are covered with carpeting which could ignite from the ashes. While burning anything may have attendant risks, I did not find there to be sufficient evidence to conclude that there is a significant risk to the landlord's property or the safety of the landlord or other occupants such that it would be unreasonable to wait until a notice to end tenancy pursuant to section 47 of the *Act* could take effect.

The landlord testified that the other units in the rental building are currently vacant. The landlord has not provided evidence to demonstrate that the rental property was vacated as a result of the tenant's actions. I find there to be insufficient evidence to conclude that the tenant's behaviour has unreasonably disturbed or adversely affected the other tenants.

As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy.

As I have dismissed the landlord's application the landlord is not entitled to recover the filing fees.

Conclusion

I dismiss the landlord's application. This tenancy will continue until ended in accordance with the *Act*.

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: May 8, 2017

Residential Tenancy Branch