



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On April 25, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting an Early Termination of Tenancy and an Order of Possession, and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call on May 28, 2019. The Arbitrator dismissed this claim stating that the Applicants did not attend the hearing. The Landlords applied for a Review Consideration as they stated they had attempted to call into the hearing and were on the line for one hour; however, were unable to connect with the Arbitrator. As a result, a new participatory hearing date was granted.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Early on in the hearing and while addressing the service of the Notice of Hearing and the exchange of evidence, the Landlords failed to provide sufficient evidence that they had served the Tenants with their evidence package. As a result, the few files that the Landlords had submitted as evidence were excluded from the proceedings in accordance with the Residential Tenancy Branch – Rules of Procedure 3.14. The Landlords were advised that they could still provide testimony in regard to their documentary evidence and that it would be given the appropriate weighting.

Issues to be Decided

Should the Landlords be issued an Order of Possession based on the early termination of the tenancy in accordance with Section 56 of the Act?

Should the Landlords be reimbursed for the Filing Fee?

Background and Evidence

The Landlords and the Tenants established a six-month fixed-term tenancy on October 1, 2017 and it continues as a month-to-month tenancy. The rent is \$2,200.00 a month and the Landlords collected and still hold a \$1,100.00 security deposit.

The Landlords provided affirmed testimony regarding the Tenants paying their rent late, not paying their rent in full, having too many occupants in the rental unit and that the inside and outside of their rental unit is dirty and unkept.

The Tenants provided affirmed testimony and stated that they have been attempting to pay the rent and that the Landlords have been refusing to cash some of their Ministry rent cheques.

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. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants have 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: for cause]... to take effect.

The Landlords' testimony was limited to issues of unpaid rent and other concerns that may be addressed under Section 47 for a Landlord's notice for cause. Although the failure to pay rent is

a reason for ending a tenancy pursuant to Section 46 of the *Act*, it is important to note that this is not one of the reasons included in section 56 for ending a tenancy early. The Landlords did not provide sufficient evidence to convince me that any of the alleged actions of the Tenants was egregious enough to justify an early termination of the tenancy, or how it would be unreasonable or unfair to the Landlord or the Tenants to wait for a notice to end tenancy under Section 47 to take effect.

After considering the testimony of both parties and applying the standards of Section 56 of the *Act*, I find that the Landlords should not be issued an Order of Possession and that the tenancy should continue until it is ended in accordance with the *Act*.

As the Landlords' Application was unsuccessful, they are not entitled to reimbursement for the Filing Fee.

At the end of the hearing, I spent time with both parties discussing the responsibilities of Tenants and Landlords and how they could learn more about the *Act* by speaking with the Information Officers or visiting the website of the Residential Tenancy Branch.

Conclusion

The Landlords Application for Dispute Resolution under the *Residential Tenancy Act* requesting an Early Termination of Tenancy and an Order of Possession, and to recover the cost of the Filing Fee is dismissed without leave to reapply.

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: July 3, 2018

Residential Tenancy Branch