



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ET FFL

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 to recover the filing fees 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. The corporate landlord was represented by its agents. The landlord primarily spoke on her own behalf assisted by her realtor KL.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the undisputed testimonies I find that the tenant was served with the landlord's application and evidence and the landlord was served with the tenant's evidence in accordance with sections 88 and 89 of the *Act*.

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

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

The rental unit is a detached home. The parties dispute what areas of the home are included in the tenancy agreement. The landlord testified that they hired a relative of the tenant to perform certain renovation work in the rental building. The landlord said that the work was not done properly and the rental building now requires additional work to make it habitable and safe. The landlord submitted into written evidence some photographs of the areas they claim require work.

They also submitted engineers reports and state that they believe immediate work is required. The landlord testified that they believe the condition of the rental building poses a danger as wires are exposed and the structural integrity is compromised. The landlord testified that at present no work is being performed.

The tenant disputes that they are the cause of the damage to the rental building. The tenant testified that they believe that repairs can be conducted while they continue to reside in the rental building.

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 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.

While I accept the parties' evidence that some repairs are required in the rental building I find there is insufficient evidence that the cause of the deficiencies lies with the tenant. The landlord testified that they retained the tenant's family member to do some work. The tenant disputes the evidence and claims that the deficiencies predate their tenancy. In the absence of documentary evidence as to the condition of the rental building at the outset of the tenancy I find there is insufficient evidence to establish that the damages are caused by the tenant.

In any event, I find there is insufficient evidence that it would be unreasonable to wait for a proper notice to end tenancy to take effect. The parties gave evidence that the deficiencies present are not actively being made worse.

Based on the evidence submitted by the parties I find, on a balance of probabilities that the landlord has not shown that the tenant's actions or negligence has given rise to a reason for this tenancy to end. Additionally, I find there is insufficient evidence to conclude that the tenant poses a risk to the landlord's property such that it would be unreasonable to wait until a notice to end tenancy pursuant to section 47 of the *Act* could take effect.

Conclusion

The landlord's application is dismissed in its entirety 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: October 2, 2018

Residential Tenancy Branch