

## **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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant did not submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary in person on October 16, 2018. Neither party raised any service issues.

The tenant requested an adjournment stating that she was having issues with her telephone since August 2018. The tenant was unable to provide any details of why this issue had not been addressed or alternative options were explored prior to the hearing. The tenant stated she was able to participate in the hearing. As such, the tenant's request to adjourn the hearing was dismissed as there was no reason preventing her from participating in the hearing and as such I find that an adjournment would be highly prejudicial to the landlord and unnecessary. The hearing proceeded with both parties making submissions and presenting evidence.

#### Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession? Is the landlord entitled to recovery of the filing fee?

Page: 2

#### 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 applicant's claim and my findings are set out below.

This tenancy began on April 25, 2015 on a 6 month fixed term tenancy and then later to a month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 19, 2015. The monthly rent began as \$650.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$325.00 and a pet damage deposit of \$200.00 were paid on April 19, 2015.

The landlord seeks an early end to the tenancy and an order of possession. The landlord claims that the tenant "is a hoarder, pet owner and smoker" which poses an immediate and severe risk to the rental unit property, other occupants and the landlord. The landlord states that the tenant's belongings "fill the entire unit covering all the floors and at some points the piles touch the ceiling." "Sometimes her door wont even open as stuff has fallen behind it. Her lifestyle has put herself, the tenants and the building and severe danger and risk. Her stove is often covered belongings she doesn't have any means of egress to the window or to her front door. She also uses a lot of ext. cables." The landlord stated that one of the tenant's friends "kicked in the door" to gain entry and the tenant was notified of the reason and the request for repair of the door. The landlord also claims that the tenant's cat feces litter the hallways causing a health issue.

In support of these claims the landlord has provided:

Copy of 1 month notice dated August 23, 2018

Copy of letter dated September 14, 2018 from Fire/Rescue Services re: Violation Notice

Copy of letter dated September 19, 2018 re: Failed Attempts Repairs due to "hoarding".

Copies of 3 photographs re: condition of rental unit

The landlord also claims that a previous one month notice dated August 23, 2018 was served upon the tenant, in which the tenant had failed to respond or address the noted issues, but that the landlord had chosen not to pursue. The landlord clarified that the one month notice was abandoned as the tenant has failed to respond or vacate the rental unit as required for the one month notice.

Page: 3

The landlord stated originally that an inspection by officials took place on August 2, 2018 in which the tenant was present. The landlord stated that the tenant and the landlord were advised that the issues have caused a violation and that the landlord and tenant must resolve these issues or face a notice of violation. The landlord claims that subsequently the tenant failed to meet these expectations and a subsequent inspection triggered a notice of violation dated September 14, 2018. The landlord stated that since the September 14, 2018 notice of violation, no action has been taken by officials. The landlord stated that ongoing discussions with official continue to allow the tenant to address the issues.

The tenant disputes the landlord's claim arguing that although she was present during the initial inspection and was aware of the issues, no time lines or deadline was imposed for action. The tenant stated that since the inspection ongoing efforts are being made to address the issues. The tenant stated that she suffers from personal medical issues which force her to have additional time to address the tenancy issues. The tenant also argued that at no time has she been given a deadline by the landlord to resolve the inspection issues.

The landlord argues that the tenant has been offered assistance from more than one support service without acceptance on the part of the tenant.

#### Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
  - o has caused or is likely to cause damage to the landlord's property;
  - 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; or
  - 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.

Page: 4

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

In this case, both parties have confirmed that an issue exists in which the landlord was served with a violation notice in which there is insufficient path of egress for the tenant for emergency purposes, due to "hoarding".. However, the landlord has claimed that the tenant was given notice to correct the issue or face an end of tenancy. The tenant has disputed that at no time has the landlord provided notice that if the issue is not resolved the tenancy could end. The tenant provided undisputed testimony that ongoing efforts are being made to address the issue, but as the tenant suffers from a medical issue, efforts are slow.

The landlord had stated that a one month notice was issued, but was abandoned by the landlord after the tenant failed to respond or address the one month notice issues. The landlord had provided undisputed evidence that ongoing discussions with officials continue and no action has been taken yet to allow the tenant an opportunity to resolve the issue. In dispute as well is that the tenant was not given notice to correct the issue or that the tenancy could end.

I find that the landlord has failed to provide sufficient evidence that it is unreasonable or unfair for the landlord to pursue an end of tenancy as a result of a one month notice taking effect. As well, I find that the landlord has failed to provide sufficient evidence that the tenant was given notice to correct the issue or an end of tenancy could result. On this basis, the landlord's application for an early end to tenancy is dismissed.

### Conclusion

The landlord's application is dismissed.

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: November 14, 2018

Residential Tenancy Branch