



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 termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he posted his application for dispute resolution on the tenant's door on March 3, 2019. I find that the landlord served the tenant in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?

2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began on February 15, 2015 and is currently ongoing. The subject rental property is the basement suite of a house. The landlord lives in the upper portion of the house.

The landlord testified that he is seeking an emergency end to tenancy because the tenant has stored too many belongings at the subject rental property which has resulted in a rat and moth infestation. The landlord testified that the rats and moths from the subject rental property have started to enter his living space.

The landlord testified that the tenant was resistant to the landlord completing an inspection of the subject rental property, but eventually allowed the landlord to inspect the subject rental property on February 22, 2019. The landlord entered into evidence photographs from behind the stove and fridge showing rat excrement. The photographs behind the fridge also shows a dead rat hanging from an outlet.

The landlord testified that he brought a pest control person with him during the February 22, 2019 inspection who informed him that the rat and moth problem originated from the tenant's suite. The landlord entered into evidence a receipt from a pest control company dated February 22, 2019 which states: "most of the problem found in the two bedroom suite area".

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 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

On this occasion I find that the landlord has not provided me with convincing evidence for ending the tenancy earlier than that allowed under section 47 of the *Act*. The landlord testified that he filed for an early end to tenancy due to a rat and moth problem. I find that even if all of the testimony of the landlord were to be accepted, the pest problem is not significant enough to strip the tenant of her right to one month's notice under section 47 of the *Act*.

I find that the landlord has not proved that 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. I therefore dismiss the landlord's application without leave to reapply.

As the landlord was not successful in his application, I find that he is not entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

The landlord's application 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: March 29, 2019

Residential Tenancy Branch