



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET and FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, for an early end to the tenancy, and to recover the fee for filing this Application.

The Landlord stated that on May 27, 2019 the Dispute Resolution Package was sent to the rental unit for the Respondent with the initials "T.B". via registered mail. The Landlord cited a tracking number that corroborates this statement. On the basis of the undisputed evidence I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however this Respondent did not appear at the hearing. As these documents have been properly served to this Respondent, the hearing proceeded in her absence.

The Landlord stated that on May 27, 2019 the Dispute Resolution Package was sent to the rental unit for the Respondent with the initials "S.B". via registered mail. This Respondent attended the hearing and acknowledged receipt of these documents.

In May of 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to each Tenant with the Dispute Resolution Package. The Respondent in attendance at the hearing acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In June of 2019 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to the Respondents. As the evidence was not served to the Respondents, it was not accepted as evidence for these proceedings.

The parties in attendance at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

Prior to considering the merits of the Application for Dispute Resolution the Landlord and the Respondent with the initials "S.B." agreed that the Application for Dispute Resolution should be amended by removing the Respondent with the initials "S.B.". As the parties agreed to this amendment, any Order issued to the Landlord will not name this party. Legal counsel and the Respondent with the initials "S.B." exited the teleconference once the Landlord agreed to the amendment.

Issue(s) to be Decided

Should this tenancy end early and, if so, should the Landlords be granted an Order of Possession?

Preliminary Matter

The Application for Dispute Resolution declares that the Landlords are attempting to end the tenancy early because the Tenant has reported a "serious electrical problem"; that "after proper notice" the Tenant has refused access; and that the Tenant has changed the locks. As these are the reasons cited for ending the tenancy early, these are the only issues that will be considered at these proceedings.

The Landlords submitted evidence in support of the One Month Notice to End Tenancy, which are not related to the issues being considered at these proceedings. That evidence was not considered at this hearing, as it is not relevant to the application to end the tenancy early.

Background and Evidence

The Landlord stated that:

- this tenancy began on August 01, 2015;
- rent is currently \$1,275.00 per month;
- the Respondent with the initials "T.B." (hereinafter referred to as the Tenant) is still living in the rental unit;
- on May 08, 2019 the Tenant sent him an email, in which she reported an electrical problem;

- he is concerned that the electrical issues in the unit may cause a fire, for which he would be liable;
- on April 24, 2019 a One Month Notice to End Tenancy was left in the Tenant's mail box;
- the One Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by May 30, 2019;
- on June 02, 2019 a Ten Day Notice to End Tenancy was left in the Tenant's mail box;
- the Ten Day Notice to End Tenancy declared that the Tenant must vacate the rental unit by June 11, 2019; and
- the Landlord has not applied for an Order of Possession on the basis of either Notice to End Tenancy.

The Landlord submitted a copy of the email the Tenant sent on May 08, 2019. In the email the Tenant declared, in part, that:

- "there are electrical issues" in the unit that she would like addressed "as soon as possible";
- "one of the switches keep shorting out the thermostat in the main bedroom doesn't shut off properly";
- "the one light switches downstairs in living for the fan shorts and every time you turn it on the other main kitchen one Dims so there is definitely Electrical issues which could cause a fire"; and
- "Please have somebody address this issue it's a very big safety concern for my children".

The Agent for the Landlord stated that:

- she made arrangements to have an electrician attend the unit on May 15, 2019;
- on May 08, 2019 she provided the Tenant with written notice of her intent to enter the rental unit on May 15, 2019;
- she and an electrician attended the rental unit on May 15, 2019;
- when they knocked on the door nobody answered the door, although she believes the Tenant's boyfriend was inside the unit;
- she telephone the Tenant but the Tenant did not answer her phone;
- she attempted to open the deadbolt on the front door but her key would not open the lock, at which time she concluded that the lock had been changed;
- she attempted to open the deadbolt on the rear door but could not insert her key because the keyhole was blocked by a metal object;
- someone contacted the police to report that she was breaking into the unit;
- the police attended and told her they could not assist her in accessing the unit;
- no written notice of entry has been served to the Tenant since May 08, 2019; and
- no locksmith was contacted to provide access to the unit.

The Landlord submitted a copy of a notice of entry, dated May 09, 2019. This Notice declares that the Landlord's agent or a realtor will need to inspect the rental unit "on or

before May 15th but not before 24 hours of this Notice". I note that this Notice does not inform the Tenant the unit will be inspected for the purposes of inspecting or repairing the electrical system.

Analysis

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

On the basis of the email sent by the Tenant on May 08, 2019, in which she reported some electrical issues, I find it was reasonable for the Landlords to have an electrician inspect the wiring in the rental unit. Given that the electrical issues were reported on May 08, 2019 and the Landlords did not have an electrician attend the rental unit until May 15, 2019, I cannot conclude that the Landlords considered the electrical issues to be an emergency. I do find, however, that the Landlords were attempting to comply with their obligations under section 32(1) of the *Act* when they arranged to have an electrician inspect the wiring on May 15, 2019.

On the basis of the undisputed evidence I find that when the Agent for the Landlord went to the rental unit on May 15, 2019 with an electrician, the person inside the house would not permit the Agent or the electrician to enter the house. Section 29(1)(a) of the *Act* permits a landlord to enter a rental unit if the tenant gives permission at the time of entry or not more than 30 days before the entry. As there is no evidence that the Tenant gave the Landlord permission to enter the unit on May 15, 2019, I find that the Landlord did not have authority, pursuant to section 29(1)(a) of the *Act*, to enter the unit on that date.

There is nothing in the *Act* that required the Tenant to give the Agent for the Landlord permission to enter the rental unit on May 15, 2019. I therefore cannot conclude that the Tenant breached the *Act* by refusing to allow the Landlord to enter on that date.

Section 29(1)(b) of the *Act* permits a landlord to enter a rental unit if at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

When a landlord gives a tenant written notice to enter a rental unit which complies with section 29(1)(b) of the *Act*, a tenant would typically be found to be in breach of the *Act* if they prevented the landlord from entering on that date in the notice to enter.

On the basis of the notice to enter that was submitted in evidence I find that the Tenant was served with a notice to enter the rental unit, which is dated May 09, 2019. Although this notice to enter declares that the Landlords' agents or a realtor wishes to enter the rental unit for the purpose of inspecting it, I specifically note that it does not declare that the Landlords intend to inspect or repair the electrical wiring.

I find, however, that the notice to enter dated May 09, 2019 does not comply with section 29(1)(b)(ii) of the *Act*, as it does not specify the date and time of the planned entry. I find that declaring that the Landlords will be entering the unit sometime between 24 hours of being served with the notice and May 15, 2019 is too vague to be considered proper notice of entry. I therefore find that the Landlords did not have the right to enter the rental unit on May 15, 2019 in accordance with section 29(1)(b)(ii) of the *Act* and I cannot conclude that the Tenant was in breach of the *Act* when she did not provide the Landlords with access on that date.

Section 29(1)(c) of the *Act* permits a landlord to enter a rental unit if the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms. As there is no evidence that the Landlords provides such services, I find that the Landlords did not have the right to enter the rental unit on May 15, 2019 in accordance with section 29(1)(c) of the *Act* and I cannot conclude that the Tenant was in breach of the *Act* when she did not provide the Landlords with access on that date.

Section 29(1)(d) of the *Act* permits a landlord to enter a rental unit if the landlord has an order of the director authorizing the entry. As there is no evidence that the Landlords have such an order, I find that the Landlords did not have the right to enter the rental unit on May 15, 2019 in accordance with section 29(1)(d) of the *Act* and I cannot conclude that the Tenant was in breach of the *Act* when she did not provide the Landlords with access on that date.

Section 29(1)(e) of the *Act* permits a landlord to enter a rental unit if the tenant has abandoned the rental unit. As there is no evidence that the Tenant has abandoned the rental unit, I find that the Landlords did not have the right to enter the rental unit on May 15, 2019 in accordance with section 29(1)(e) of the *Act* and I cannot conclude that the

Tenant was in breach of the *Act* when she did not provide the Landlords with access on that date.

Section 29(1)(f) of the *Act* permits a landlord to enter a rental unit if an emergency exists and the entry is necessary to protect life or property. As the Landlords did not attempt to inspect the unit until a week after the Tenant reported her concerns about the electrical wiring, I cannot conclude that the inspection was an emergency. I find that the Landlords did not have the right to enter the rental unit on May 15, 2019 in accordance with section 29(1)(f) of the *Act* and I cannot conclude that the Tenant was in breach of the *Act* when she did not provide the Landlords with access on that date.

Section 56(2)(a)(i) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. I cannot conclude that the Tenant unreasonably disturbed the Landlord when she did not provide the Agent for the Landlord or the electrician with access to the rental unit on May 15, 2019, as I do not find that she was legally obligated to do so.

Section 56(2)(a)(ii) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. I cannot conclude that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant when she did not provide the Agent for the Landlord or the electrician with access to the rental unit on May 15, 2019, as I do not find that she was legally obligated to do so.

Section 56(2)(a)(iii) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk. I cannot conclude that the Tenant has put the landlord's property at significant risk when she did not provide the Agent for the Landlord or the electrician with access to the rental unit on May 15, 2019, as I do not find that she was legally obligated to do so.

Section 56(2)(a)(iv) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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. I cannot conclude that the Tenant engaged in illegal activity when she failed to provide the Agent for the Landlord or the electrician with access to the rental unit on May 15, 2019, as I do not find that she was legally obligated to do so.

Section 56(2)(a)(v) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property. There is no evidence that the Tenant caused any damage to the property when she failed to provide the Agent for the Landlord or the electrician with access to the rental unit on May 15, 2019.

As the Landlords have failed to establish that the Tenant's failure to provide access to the unit on May 15, 2019 are grounds to end the tenancy, pursuant to section 56(2) of the *Act*, I decline to order an early end to the tenancy on that basis.

In the event the Tenant fails to provide access to the rental unit after she is provide with proper written notice to enter the unit, the Landlords have the right to file an Application for Dispute Resolution in which they apply for an Order giving them access to the rental unit. It is also possible that the Landlords would have grounds to end the tenancy, pursuant to section 47 of the *Act*, if the Tenant prevents the Landlords from accessing the unit after she has been served with proper written notice to enter the unit.

On the basis of the undisputed evidence I find that the Tenant changed the deadbolt lock on the front door of the rental unit. I therefore find that the Tenant breached section 31(3) of the *Act*, which prohibits tenants from changing a lock or other means that gives access to the rental unit unless the landlord agrees in writing to, or the director has ordered, the change. In the event the Tenant fails to provide the Landlord with a key to the deadbolt lock on the front door, I find it entirely possible that the Landlord would have grounds to end this tenancy pursuant to section 47(d) of the *Act*. As there is no evidence that the Landlords have requested a key to the lock, however, I find it would be premature to end the tenancy on the basis of the lock change.

In determining that it would be premature to end the tenancy on the basis of the lock change I am guided by my decision that changing the lock does not place the Landlord's property at significant risk and it does not seriously jeopardize the health or safety or a lawful right or interest of the landlord or another occupant. In the case of an emergency I find it entirely likely that emergency personnel would access the rental unit by force, rather than waiting for the Landlord to provide a key to the unit.

As the Landlords have failed to establish that changing the locks are grounds to end the tenancy, pursuant to section 56(2) of the *Act*, I decline to order an early end to the tenancy on that basis.

Conclusion

I find that the Landlords have not established grounds to end this tenancy early, pursuant to section 56 of the *Act*. I therefore dismiss the Landlords' application to end the tenancy early and for an Order of Possession.

As the Landlords have failed to establish the merits of their Application for Dispute Resolution I dismiss their application for compensation to recover the fee for filing this Application for Dispute Resolution.

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: June 25, 2019

Residential Tenancy Branch