



Dispute Resolution Services

Page: 1

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 tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord personally served the tenant with her application for dispute resolution on June 26, 2019. I find that the tenant was served in accordance with section 89 of the *Act*.

Issues 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 tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on March 1, 2015 and is currently ongoing. Monthly rent in the amount of \$950.00 is payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant to the landlord. The tenant rents the basement suite of the house and the landlord lives above the tenant.

Both parties agree that the landlord has served the tenant with a One Month Notice to End tenancy for Cause and the tenant has disputed this notice. A hearing dealing with the above notice is set to be heard on July 22, 2019.

The landlord testified that she is seeking an emergency end to this tenancy because the tenant refused to allow her access to the subject rental property for emergency repairs. The landlord testified that her stove stopped working and the service person she hired to fix it believed the problem was in the electrical panel which is in the tenant's suite.

The landlord testified that she e-mailed the tenant on March 28, 2019 requesting access to the subject rental property. The March 28, 2019 e-mail was entered into evidence and states that the landlord intends on listing the subject rental property for sale and will require access to the subject rental property for photographs to be taken and for viewings. The March 28, 2019 e-mail makes no mention of the need to access the subject rental property for emergency repairs.

The tenant responded to the March 28, 2019 e-mail via e-mail on March 29, 2019 and refused to give the landlord permission to photograph the suite or to enter the suite for any reason. The March 29, 2019 e-mail was entered into evidence.

The landlord testified that she did not inform the tenant that she needed access to the subject rental property for emergency repairs because the tenant denied access to the subject rental property "for any reason" in the March 29, 2019 e-mail.

The tenant testified that he was first informed of the need for emergency repairs when he received the landlord's application for dispute resolution on June 26, 2019. On June

26, 2019 the tenant e-mailed the landlord and granted her access to the subject rental property for emergency repairs. The tenant testified that he was only restricting access to the subject rental property regarding viewings for the sale of the property as he was concerned about his privacy. The tenant testified that a repair person is scheduled for later today to make the required repairs. The landlord did not dispute the tenant's testimony that he allowed the landlord access to the subject rental property for the required repairs.

The landlord testified that she is also seeking an emergency end to tenancy because the tenant has intentionally flooded the foundation of the subject rental property, causing damage. The landlord testified that on several occasions she heard running water and was not sure where it was coming from; however, on one occasion she had her window open and saw that the tenant had left an outside tap running which pooled against the foundation of the subject property. The landlord entered into evidence a two second video clip showing an outside tap running water onto the ground creating a small puddle. The landlord entered into evidence a seven second video showing the tenant filling up a bowl from the outside tap and splashing it on the cement pad in front of the tenant's door. In both video clips potted plants can be seen surrounding the tenant's door.

The landlord did not enter any evidence from a contractor or other expert stating that the tenant's actions caused damage to the subject rental property.

The tenant testified that the landlord removed the hose that used to be attached to the outside tap and so he was using a bowl to collect water from the tap to water his potted plants. The tenant testified that the water was not left running for more than one minute. The tenant testified that he splashed water on the cement pad to wash away dirt, so it did not track inside.

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 the notice already given to the tenant. I find that the landlord has not proved that the tenant flooded the foundation of the subject rental property or that this flooding caused damage. I find that the video footage only proves that the tenant washed dirt off the cement pad and left the water running for at least two seconds. I find that the landlord has not proved on a balance of probabilities, that the tenant consistently left water running. I find that on a balance of probabilities the landlord has not proved that the tenant's actions damaged the subject rental property.

Given the fact that the tenant has granted the landlord access to the subject rental property to make the requested repairs, I find that it would not be unreasonable or unfair to the landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect. I therefore dismiss the landlord's application without leave to reapply.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 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: July 04, 2019

Residential Tenancy Branch