



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LINDFIELD INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

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 tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:13 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's manager (the "manager") 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 manager and I were the only ones who had called into this teleconference.

The manager testified that the landlord's application for dispute resolution was posted on the tenants' door on August 14, 2019. A witnessed proof of service document confirming the above testimony was entered into evidence. I find that the tenants were deemed served with the landlord's application on August 17, 2019, in accordance with sections 89 and 90 of the *Act* and the Director's Standing Order on the service requirements for expedited hearings.

Issue 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 manager, 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 manager provided the following undisputed testimony. This tenancy began on September 1, 2013 and is currently ongoing. Monthly rent in the amount of \$1,025.00 is payable on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid by the tenants to the landlord.

The manager testified that he recently learned that the tenants have been without electricity since May 16, 2019. The manager testified that the above date was confirmed by B.C. Hydro over the telephone.

The manager testified that the landlord is concerned about the safety of the alternative methods of light and heat used by the tenants. The manager testified that he does not know what the tenants are using for heat and light but is concerned that if candles or propane stoves are being used, there could be a risk of fire. The manager testified that he was concerned about the state of the fridge without electricity.

The manager testified that his primary concern is the fact that the basement sump pump runs off electricity and without electricity, the basement may flood during heavy rains.

The landlord's written submissions state:

The house has an in-ground basement with an electric sump pump with high water table and in heavy rain the basement will flood. In the basement is the furnace, laundry, electrical panel, one finished room with drywall and flooring. There is a battery back up (see picture) but it needs charging on a regular basis.

The battery viewed is not the one we installed suggesting our battery was replaced due to lack of power. Basement has flooded before with power on.

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 notice under section 47 of the *Act*. I find that the landlord has not proved, on a balance of probabilities, that the tenants are using cooking and lighting methods that put the landlords' property at significant risk. Suspicions are not enough to evict a tenant under section 56 of the *Act*.

I find that the landlord has not proved, on a balance of probabilities, that the basement is in imminent danger of flooding given that it is August and a back up battery system is in place for the sump pump. I find that the landlord has not proved that the battery is not being charged or replaced when necessary.

While the actions of the tenants are concerning any may support an Order of Possession based on a One Month Notice to End Tenancy for Cause, 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 its application, I find that it is not entitled to recover the \$100.00 filing fee from the tenants, 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: August 30, 2019

Residential Tenancy Branch