



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On June 28, 2019, the Landlords made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlords attended the hearing and the Tenants attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlords advised that they served two Notice of Hearing packages and some evidence to the Tenants by hand on July 9, 2019 with a witness. The Tenants confirmed that they received these packages. Based on the undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing packages and accompanying evidence.

The Landlords advised that they served evidence of their July 16, 2019 inspection letter to the Tenants by posting it to the Tenants’ door on July 17, 2019 and the Tenants confirmed that they received this evidence. As well, the Landlords advised that they served evidence of two emails to the Tenants by posting it to the Tenants’ door on July 24, 2019 and the Tenants confirmed that they received this evidence as well. I find it important to note that Rule 10.2 of the Rules of Procedure requires that the applicant must submit all evidence that they intend to rely on with the Application for Dispute Resolution. While Rule 10.6 allows for the consideration of late evidence, based on my review of this evidence, I do not find it particularly relevant to the main issue of this Application. As such, I have excluded this late evidence and will not consider it when rendering this decision. However, the Landlords’ testimony with respect to this evidence was still heard.

The Tenants advised that they served their evidence to the Landlords by placing it on the Landlords' doorstep on July 27, 2019; however, the Landlords advised that they did not receive this evidence. I find it important to note that Rule 10.5 of the Rules of Procedure states that the respondents must ensure evidence they intend to rely on at the hearing is served on the applicants as soon as possible and at least two days before the hearing. As well, Section 88 the *Act* outlines the methods in which a document can be served, and placing a document on a doorstep is not an appropriate method of service. As this evidence was not served in compliance with Rule 10.5 or Section 88 of the *Act*, I have excluded this evidence and will not consider it when rendering this decision. However, the Tenants' testimony with respect to this evidence was still heard.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an early end to this tenancy and an Order of Possession?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2018 and rent was currently established at \$2,000.00 per month, due on the first of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$300.00 was also paid.

In addition, all parties agreed that a Mutual Agreement to End a Tenancy was signed on June 19, 2019 with an effective date of July 1, 2019 at 12:00 PM. However, the Tenants advised that they were "misled" when they signed this and were under "duress".

The Landlords advised that the Tenants caused a kitchen fire on June 14, 2019 when they forgot about a pot of oil cooking on the stove and subsequently left the rental unit. They stated that Tenant K.A. acknowledged being responsible for this fire and they submitted documentary evidence of her admitting to this fire on social media. They then referenced the Incident Report of the Fire Department, that was submitted as documentary evidence, and noted that the report stated that the Tenants admitted to leaving a pot of oil cooking on the stove unattended for 20 minutes. As well, they emphasized that this report indicated that the “upstairs unit was uninhabitable...” The Landlords also referenced an email, submitted as documentary evidence, from a restoration company indicating that the rental unit needs to be vacant as a “large portion of the upper suite and also the mechanical system in the basement” will have to be removed and the “house will not be habitable for around six months.” The Landlords also submitted evidence of the Tenants acknowledging that the rental unit will be uninhabitable for at least six months.

Tenant J.G. advised that the fire was due to a faulty knob on the oven and he thought he had turned the stove off, but he was not sure. He stated that the notes in the Fire Department Incident Report indicating that he admitted to being responsible for the fire were mistakenly documented and that he attempted to have this corrected with the Fire Department, to no avail. He also stated that it was his belief that the email from the restoration company and an asbestos report submitted by the Landlords were “flawed and manipulated” as he speculated that the Landlords had some personal relationship with these businesses. However, he did not have any proof of this allegation.

Analysis

Section 56 of the *Act* establishes the grounds for a Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. 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.

Based on the undisputed evidence and affirmed testimony before me, there was a fire in the rental unit caused by a pot of oil being left with the element on. While the Tenants' position is that this was not due to their negligence, I find it important to note that the Fire Department Incident Report noted that "The renter had put oil on the stove to cook some potatoes, forgot he did and left the house. They returned 20 minutes later." It is not clear to me how the Firefighter would have documented this in the report if it was not relayed directly by the Tenants. Given that it is this person's role to document the specifics of this incident, I do not find it reasonable that such precise details would have been created arbitrarily by the Firefighter. Furthermore, Tenant J.G. did not submit any evidence as proof that he attempted to correct this alleged mistake in the Incident Report. As a result, I find that this causes me to doubt his credibility and be suspicious of the truthfulness of his testimony. Consequently, I am satisfied, on a balance of probabilities, that he was more likely than not responsible for this fire.

While this may have been an absent-minded accident, I am satisfied that this seriously jeopardized the health or safety or lawful right or interests of the Landlords, put the Landlords' property at significant risk, and caused extraordinary damage to the residential property.

The Landlords must also demonstrate 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 for cause" to take effect. While Tenant J.G. relies on his speculation that the reports the Landlords submitted are "flawed and manipulated", he has not provided any evidence to substantiate the basis for this speculation. As such, I find that the evidence of the Landlords is more compelling and persuasive.

Therefore, due to the Tenants' negligence with respect to this fire, I am satisfied that the damage they have caused to the rental unit has rendered it uninhabitable.

Under these circumstances described, I find that it would be unreasonable and unfair to the Landlords to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlords have provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlords are entitled to an Order of Possession.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to recover the \$100.00 filing fee from the security deposit in satisfaction of the debt outstanding.

Conclusion

I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 1, 2019

Residential Tenancy Branch