



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 landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:13 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord SK attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was personally served with the landlords' application for dispute resolution hearing package and evidence on August 14, 2019. The landlord provided proof of service in their evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlords' application and evidence.

Issues(s) to be Decided

Are the landlords entitled to an early end of tenancy and an Order of Possession?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed-term tenancy began on September 1, 2018, with monthly rent set at \$1,050.00, payable on the first of the month. The landlords collected, and still hold, a security deposit in the amount of \$525.00.

The landlords are seeking the early end of this tenancy as they believe that the tenant has put the landlord's property at significant risk. The landlords also feel fearful for their personal safety, and provided police file numbers in their evidentiary materials.

The landlord testified in the hearing that the home was water damaged after a pipe had burst on or about August 4, 2019, and in order for the insurance company to undertake repairs and remediation, the tenant would have to provide access to the insurance company and their contractors. The landlord testified that the tenant has been uncooperative with the landlords, and had denied access to contractors on August 13, 2019 for the purpose of repairs despite the fact that the tenant was made aware that access was required. The landlord also testified that the tenant had turned off fans used to dry the home. The landlord included correspondence from the insurance company confirming that the tenant has been uncooperative.

The landlord confirmed in the hearing that no written notice was ever issued to the tenant in order to access the rental unit, as communication has always been through other means.

The landlord expressed concern that the incident took place in early August, and the fact that the wet insulation must be removed.

Analysis

The landlords, in their application, requested an Order of Possession on the grounds that the tenant poses a threat to the landlord's property by being uncooperative with the landlord and the insurance company who are currently in the process of remediating water damage to the home after a pipe had burst.

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 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, 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.

The reason cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided a letter from the insurance company, and other evidence such as photos in support of their testimony that the tenant has put the landlord's property at significant risk by denying access to the insurance company and their contractors.

The landlords have not issued the tenant any Notices to End Tenancy, nor have they applied for an Order of Possession pursuant to a 1 Month Notice for any of the above reasons under section 55 of the *Act*. The landlords, in their application, are attempting to obtain an early end to tenancy as they believe the tenant's behaviour poses an immediate threat to their property.

Separate from whether there exist reasons that would enable a landlords to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlords to wait until an application to end the tenancy for cause was considered. In this case, I find that the landlords' application falls short of the requirements outlined in section 56 of the *Act*. An early end to tenancy

is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although I accept the undisputed testimony and evidence of the landlords that a pipe did indeed burst in the home, and that the home does require repairs which would necessitate access by the tenant, I am not satisfied that the landlords had provided sufficient evidence that is compelling enough for me to allow the landlords to bypass the standard process of issuing the tenants a standard 1 Month Notice for Cause. I find that the pipe had burst on or about August 4, 2019, and the landlords are currently in the process of remediation and repairs.

Section 33 of the *Act* states the following regarding emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, **and**
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system...
 - (v) the electrical systems....

Although I find that matter to be urgent in nature, I find that this matter would no longer qualify as an emergency repair under section 33 the *Act* as I find that the evidence supports that the initial emergency with the burst pipe had been abated.

A landlord must abide by section 29(1) of the *Act* if they wish to enter the tenant's rental unit as set out below:

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) 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;

(c) 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;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

As I find that an emergency no longer exists by definition of section 33 the *Act*, and as I am not satisfied that the landlords have complied with section 29(1) of the *Act*, I find that the landlords have failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. For these reasons, I dismiss the landlords' application for an early end to this tenancy.

As the landlords were not unsuccessful in this application, I dismiss the landlords' application to obtain the recovery of the filing fee from the tenant.

Conclusion

I dismiss the landlords' application in its entirety without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

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 23, 2019

Residential Tenancy Branch