



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 43 HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 19, 2019 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord sought reimbursement for the filing fee.

The Agent and Housing Coordinator appeared at the hearing for the Landlord. The Tenant did not appear at the hearing. I explained the hearing process to the Agent and Housing Coordinator who did not have questions in this regard. The Agent and Housing Coordinator provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and evidence were sent to the rental unit by registered mail on August 27, 2019. The Landlord submitted the Customer Receipt with Tracking Number 1 on it. The Landlord submitted evidence showing the package was delivered and signed for August 29, 2019.

Based on the undisputed testimony of the Agent and evidence of service submitted, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(2)(b) of the Act. I also find the Landlord complied with rule 10.3 of the Rules of Procedure in relation to timing of service. Based on the evidence of service, I find the Tenant received the package August 29, 2019, in sufficient time to prepare for and appear at the hearing.

The Agent and Housing Coordinator were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered

the documentary evidence and oral testimony of the Agent and Housing Coordinator. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Landlord be granted an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 2012 and is a month-to-month tenancy. The Agent advised that rent is \$296.00 per month. Rent is due on or before the first day of each month. The agreement is signed by the Tenant and for the Landlord.

The Agent advised the Tenant paid a \$300.00 security deposit. She confirmed the Landlord is seeking to keep \$100.00 of this as reimbursement for the filing fee.

The Agent testified as follows.

The Tenant has caused extraordinary damage to the rental unit and building. He has also jeopardized the safety of staff and other tenants. Due to health and other issues of the Tenant, the rental unit has been contaminated with blood and fecal matter. The Tenant is tracking the blood and fecal matter into common areas of the building. This is a biohazard.

The Tenant needs a walker or wheelchair but does not always use these and often falls which causes him to bleed. This happens in the common areas of the building which results in the Tenant's blood contaminating the common areas.

Other tenants have complained about the smell coming from the rental unit. Other tenants are concerned about the blood and fecal matter contaminating the common areas of the building.

An incident occurred where the Tenant fell. It was discovered that the Tenant had tracked blood from his unit to another unit and then to the elevator. Others could not use the elevator because of the blood in it.

In April, it was discovered that there was blood and fecal matter all over the rental unit. The Landlord hired a restoration company to clean the rental unit which cost \$6,000.00. The Tenant was in the hospital at the time. The fire department sealed the unit stating it was uninhabitable. The laminate and carpet had to be removed because it was contaminated with blood and fecal matter. The Landlord put temporary flooring down. This has now been contaminated with blood and fecal matter as well. The Landlord had to disinfect common areas. The rental unit will have to be "gutted" when the Tenant vacates.

The circumstances are urgent because staff of the Landlord cannot continue to clean up after the Tenant. Other tenants are concerned about the situation and how it may impact their health and are concerned about the Tenant's behaviour. The rental unit is meant for independent living. The Tenant needs more support. The Tenant is tracking blood and fecal matter from the rental unit to the common areas of the building on a consistent basis. It is an ongoing issue.

The Housing Coordinator testified as follows.

The Tenant has been advised to seek support. In April, an incident occurred where the Tenant's blood and fecal matter ended up in the common area of the building. The Tenant refuses to use assistive devices such as a wheelchair. Because of this, the Tenant is more at risk of falling.

In relation to the April incident, the rental unit had blood and fecal matter in every room. The restoration company bagged and set aside some of the Tenant's items. The restoration company disposed of some items.

There was an alcohol-related incident with the Tenant in August. The Tenant was taken to hospital. Staff viewed the rental unit which again had blood and fecal matter around it. The Tenant's mattress was compromised. The Tenant had not done much to clean up the unit.

Staff viewed the rental unit the week of the hearing and the Tenant is still not managing to keep blood from contaminating the rental unit. The Tenant continues to have open and bleeding wounds and poses a significant risk to himself and others.

This situation has developed because of the Tenant's health, his inability to manage his affairs and his approach to the situation.

The Landlord submitted evidence of an incident involving the Tenant which resulted in blood and fecal matter in the common areas on September 02, 2018.

The Landlord submitted a contract with the restoration company which shows they disposed of 25 bags and two mattresses as biohazard waste at a cost of \$5,670.00.

The Landlord submitted an Unusual Occurrence Report stating the following. May 13, 2019, the fire department flagged the rental unit as a biohazard. Someone from a restoration company attended and advised that the “bio load” in the form of bodily fluids (blood and fecal matter) was so pervasive that significant and lengthy restoration will need to occur”. The individual advised that flooring should be removed. Other tenants have complained about the condition of the rental unit and common areas being contaminated.

The Landlord submitted an email from another tenant about an incident October 02, 2018 when he ran into the Tenant in the common area and the Tenant had blood on his legs. It also states that the tenant observed the Tenant fall.

The Landlord submitted letters to the Tenant about the issues raised dated September 04, 2018, September 06, 2018, November 01, 2018.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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 (c) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or

5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

Based on the undisputed testimony of the Agent and Housing Coordinator, the contract with the restoration company and Unusual Occurrence Report, I accept the following. The Tenant has allowed the rental unit to become contaminated with blood and fecal matter. In April, it was discovered that there was blood and fecal matter all over the rental unit. The Landlord had to hire a restoration company to clean the rental unit and paid \$5,670.00 to have this done. The laminate and carpet in the rental unit had to be removed. Temporary flooring was installed which has now become contaminated with blood and fecal matter. This is an ongoing issue.

Based on the above, I find the Tenant has caused extraordinary damage to the rental unit. I accept this is an urgent situation given the extent of the damage in April and the undisputed testimony of the Agent and Housing Coordinator that the Tenant continues to allow the rental unit to become contaminated with blood and fecal matter. I also accept this is urgent given the nature of the damage which I accept raises health and safety issues.

The Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit which will be effective two days after service on the Tenant.

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Landlord can keep \$100.00 of the security deposit.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$100.00. The Landlord can keep \$100.00 of the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 18, 2019

Residential Tenancy Branch