



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFT

Introduction

This hearing was convened as a result of the Landlord's Application for an Expedited Dispute Resolution Hearing, made on October 7, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlord, the Landlord's representative S.W., as well as the Tenant, and the Tenant's representative A.J. attended the hearing at the appointed date and time and provided affirmed testimony.

S.W. stated that the Landlord served her Application and documentary evidence package to the Tenant in person on October 17, 2019. A.J. confirmed receipt. A.J. stated that the Tenant served her documentary evidence to the Landlord in person on October 24, 2019. S.W. confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2019. The Tenant pays rent in the amount of \$2,000.00 to the Landlord which is due on the first day of each month. The Tenant did not pay a security deposit.

S.W. stated that the Landlord is seeking to end the tenancy early based on the fact that the Tenant or a person permitted on the property has seriously jeopardized the health and safety and lawful right of another occupant or the landlord, put the landlord's property at significant risk, and has breached a material term of the tenancy agreement.

S.W. stated that the Landlord has served the Tenant with a One Month Notice to End Tenancy dated September 30, 2019, however, the Landlord feels as though it would be unreasonable or unfair to wait until the effective date of the Notice to take effect.

S.W. testified that the Tenant has allowed another occupant onto the rental property who has altered the electrical panel and installed a new electrical outlet without the Landlord's permission and without a permit. S.W. stated that the Landlord employed the services of an inspector who determined that the alterations could pose a risk as they were done without first obtaining a permit. During the hearing, the parties agreed that the electrical alterations were removed on October 10, 2019 and no longer pose a threat.

S.W. also stated that the Tenant has allowed another occupant to store dangerous tools in the shop area which also poses an immediate and severe safety risk. S.W. stated that the occupant is storing welding equipment, combustible acetylene gas, and power tools in the shop area that is not supported by fire codes as the shop is an unprotected wooden structure. S.W. stated that these items pose a risk to those who make use of the public washroom located less than 15 feet away.

In response, A.J. stated that the Landlord has made no mention to the Tenant regarding their safety concerns prior to the Tenant being served the Notice to End Tenancy. A.J. stated that the welding equipment and power tools are safe to use and were purchased

at a local hardware store. A.J. stated that the acetylene gas is safely stored and does not pose a risk.

Analysis

Based on the affirmed documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy 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*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied...

- (a) *The tenant or a person permitted on the residential property by the tenant had done any of the following:*
 - (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
 - (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
 - (iii) *put the landlords property at significant risk;*
 - (iv) *engaged in illegal activity that*
 - (A) *has caused or is likely to cause damage to the landlord's property,*
 - (B) *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,*
or
 - (C) *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
 - (v) *caused extraordinary damage to the residential property,*
and
- (b) ***it would be unreasonable, or unfair to the landlord 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 causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, S.W. indicated that the reason for seeking an order of possession was in relation to ongoing concerns regarding changes to an electrical system without permission or permit, as well as the storage of dangerous equipment and acetylene gas that is currently stored in a shop area that is not supported by fire codes as the shop is an unprotected wooden structure. S.W. stated that these items pose a risk to those that make use of the public washroom located less than 15 feet away.

Based on the testimony and evidence before me, I accept that the electrical alterations have been removed and are no longer a safety concern. The Landlord claims that the welding equipment, power tools, and acetylene gas continue to pose an immediate and severe risk. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the situation is so urgent that the tenancy should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlord's Application, without leave to reapply.

As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

The landlord has issued a one month notice to end tenancy for cause; however, they had insufficient evidence to prove the tenancy should end earlier under section 56. The tenancy will continue 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: October 31, 2019

Residential Tenancy Branch