



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on October 30, 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 and the Tenant attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord stated that the Application and documentary evidence package was served to the Tenant by registered mail on November 1, 2019. The Landlord submitted the registered mail receipt in support. The Tenant stated that he has not yet retrieved the Landlord's mailing. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on November 6, 2019, the fifth day after their registered mailing. The Tenant did not submit any documentary evidence in response to the Application.

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 June 1, 2019. Currently, the Tenant pays rent in the amount of \$1,400.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 which the Landlord continues to hold. The Landlord submitted a copy of the tenancy agreement in support.

The Landlord stated that she is seeking to end the tenancy early based on the fact that the Tenant flooded his rental unit on September 12, 2019. The Landlord stated that the flood not only caused damage to the rental unit but also impacted other units in the building. The Landlord stated that there have been some other issues throughout the tenancy in which the Tenant has been requesting an additional parking pass for his guests and has incurred some strata fines which he refuses to pay. The Landlord stated that there have been complaints regarding the Tenant smoking cannabis in his rental unit as well as disposing garbage on another occupant's patio.

The Landlord subsequently served the Tenant with a One Month Notice to End Tenancy for Cause, with an effective date of October 31, 2019. The Landlord is seeking to end the tenancy earlier than the effective date of the One Month Notice if possible. The Landlord submitted text message conversations between the parties, and letters from the Strata in support.

In response, the Tenant stated that he notified the Landlord at the start of the tenancy that his toilette was running and needed to be replaced. The Tenant stated that on September 12, 2019 he used the toilette before leaving for work. The Tenant stated that he later returned home to find his toilet had flooded. The Tenant stated it was not his fault that the toilet flooded, and that the Landlord should have repaired the issue. The Tenant stated that the Landlord had ensured that he could get another parking pass and denied smoking cannabis or disposing of his garbage on another patio.

Analysis

Based on the unchallenged and 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, the Landlord indicated that the reason for seeking an order of possession was in relation to the Tenant flooding the rental unit as well as ongoing concerns regarding visitor parking issues, strata fines, smoking cannabis in the rental unit and disposing garbage on another occupant's patio.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it 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 it 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: November 18, 2019

Residential Tenancy Branch