



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened in response to an application by the Landlord for an early end of tenancy and an Order of Possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that its email is as set out in the Landlord’s application.

Issue(s) to be Decided

Is the Landlord entitled to an early end to the tenancy?

Background and Evidence

The tenancy under written agreement started on November 12, 2019. Rent of \$1,200.00 is payable on the first day of each month.

The Landlord states that from about 5 days after the start of the tenancy until the first part of December 2019 the Tenants allowed a person (“Jimmy”) to be on the property and that Jimmy stole items from the Landlord’s garage, shed and cars. The Landlord states that its basis for the Landlord’s belief that Jimmy stole items was that Jimmy was seen by the Landlord moving items around in the yard and washing the Landlord’s truck

tires. The Landlord states that the Tenants were given a list of missing items and that some of those items were returned in the first part of December 2019. The Landlord states that because of the thefts the Landlord's mother who lives with the Landlord in the upper unit was disturbed and the Landlord was frustrated. The Landlord states that it made a police report in November or December 2019.

The Tenant states that nothing was returned to the Landlord by them and that one of the items said to be stolen was located in the yard by the Landlord. The Tenant states that the Landlord has a bit of a hoarder problem in the yard. The Landlord states that it is not organized enough to refer to any supporting evidence that Jimmy was the thief.

The Landlord states that the Tenants caused extraordinary damage to the unit and put the property at significant risk as Jimmy started two fires in the yard: once in mid November 2019 and once at the end of December 2019. The Landlord states that after coming home to see a fire in progress Jimmy informed the Landlord that the fire would be put out. The Landlord states that Jimmy was burning items found around the yard such as old wood, trash and other materials. The Landlord states that the fire left grass burned and the yard damaged with ashes.

The Landlord states that the Tenants also started a fire in the fireplace and that the fire department was called by other persons who were disturbed by unusual smoke coming from the chimney. The Landlord is uncertain whether the tenancy agreement prohibits the Tenants from using the fireplace and states that the Landlord asked the Tenants not to use the fireplace and that they agreed. The Tenant states that it has no recall of a second fire truck coming to the unit other than for the fireplace smoke. The Landlord states that the fire department sent the Landlord a letter on November 28, 2019 warning the Landlord that it would be billed if the fire department had to come out again.

The Landlord states that Jimmy took apart the laundry room and made repairs without the Landlord's permission leaving some items outside after the repairs. The Landlord

states that this occurred in early November 2019. The Tenant states that the laundry room was dangerous, that Jimmy worked on this for over a month and that only one shelf was left outside the room. The Tenant states that the Landlord also asked Jimmy whether the Landlord might hire him for other work. The Landlord confirms that this activity in the laundry room went on for a month.

The Landlord states that the Tenants put the Landlord's property into serious jeopardy and that the Landlord need to bring things to a stop. The Landlord states that in any event the Landlord's application stopped the Tenants' behavior. The Landlord states that it would be unfair for the Landlord to wait for a one month notice to end tenancy as "the system is not working", rents are being paid late and the Landlord is concerned about further damage because of the Tenants' past record.

The Tenant states that Jimmy has been gone for the past 2 to 3 weeks, would not be back and has not been invited back since he left. The Landlord agrees that Jimmy has not been around for the past couple of weeks and states that the Tenants also told the Landlord to call the police if Jimmy returns to the property. The Landlord states that Jimmy was the big problem.

Analysis

Section 56(1) and (2) of the Act provides that a landlord may make an application to end a tenancy earlier than it would end if the landlord issued a one month notice to end tenancy for cause where:

- (a) the tenant or a person permitted on the residential property by the tenant has 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 landlord's 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 Landlord has only provided verbal allegations of a theft by Jimmy without anything to corroborate this evidence. The Landlord's only direct evidence is of seeing Jimmy moving items and washing tires. This is not evidence of theft. The Tenant denies retrieving any stolen items. For these reasons I find on a balance of probabilities that the Landlord has not provided sufficient evidence to substantiate that a person permitted on the property by the Tenants engaged in an illegal activity.

As the Landlord's evidence of damage caused by the fire is limited to a burned grass patch and ashes, I find that the Landlord has not substantiated extraordinary damage to the unit. While it may be considered that a fire in a back yard could be a risk the Landlord provided no evidence that the fires put the its property at significant risk. For this reason, I find that the Landlord has not provided sufficient evidence to substantiate that the Tenants caused a significant risk to the property.

As there is nothing in the tenancy agreement that restricts the Tenants from using the fireplace it appears that the Landlord did not, at the outset of the tenancy, consider that its use would cause any significant risk to the property. Further while there may some risk to the building by the use of the fireplace, there is no evidence of how the risk is

significant. The Landlord did not provide any reasons for why the fire department's threat to charge for further call outs for this type of incident is relevant to support a significant risk for use of the fireplace. For these reasons I find that the Landlord has not shown that the Tenants caused a significant risk to the property by lighting a fire in the fireplace.

Given the undisputed evidence that the work done on the laundry room was done over a month in November 2019 and was primarily repaired I find that the Landlord has not substantiated that at the time of this urgent application there was any significant damage caused to the property due to this act.

As none of the reasons for the early end of the tenancy has been substantiated, I find that the Landlord is not entitled to an order of possession and I dismiss the application. The tenancy continues.

Conclusion

The application is dismissed.

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: January 28, 2020

Residential Tenancy Branch