



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On March 9, 2020, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with S.W. attending as an agent for the Landlord. The Tenants did not attend during the 50-minute hearing. All parties provided a solemn affirmation.

The Landlord advised that the Tenants were each served the Notice of Hearing and evidence package by hand on March 9, 2020. A signed proof of service form and pictures were submitted to confirm service. Based on the undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing and evidence package.

The Tenants did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on November 15, 2019 and that rent was currently \$3,300.00 per month, due on the fifteenth day of each month. A security deposit of \$1,650.00 was also paid.

The Landlord advised that on March 7, 2020, the Tenants plugged the toilet, causing a flood to the extent that water had backed up into the living room, damaging the flooring. The Tenants reported this to the Landlord, and she called an emergency plumber who took three hours to unplug the toilet. The plumber determined that the clogged toilet was caused by the Tenants use of hand tissues, and the Landlord insisted this was done intentionally. She referenced the pictures and the plumbing invoice, submitted as documentary evidence, to support her position.

She also stated that the rental unit has six bedrooms, but five extra occupants are living there. However, she did not submit any evidence of this as she was afraid to take pictures. She submitted that the Tenants are smoking in the rental unit contrary to the tenancy agreement but had no evidence of such. As well, she advised that the Tenants have made a substantial amount of noise after 12:00 AM and that the neighbours have complained. Finally, she stated that the Tenants have left a substantial amount of garbage strewn about the property and the city has given her two warnings to have this cleaned up. S.W. said that he texted the Tenants about the garbage issue on February 20, 2020 but the garbage still remains. The Landlord cited the copy of the warning letter from the city, submitted as documentary evidence, to corroborate this claim. However, regarding the other issues, the Landlord has only verbally warned the Tenants.

Analysis

Section 56 of the *Act* establishes the grounds for a Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants have 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.

When reviewing the totality of the evidence before me, I do not find that the Landlord has provided any persuasive or compelling documentary evidence to support justification for an early end of tenancy. While she claims that the flooding of the toilet was an intentional act, there is no proof of this. As the burden of proof on an early end of tenancy Application is substantially higher than that of an Application for an Order of Possession for Cause, based on what was presented before me, I am not satisfied that the Landlord has substantiated that the Tenants have engaged in any of the above behaviours and that "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 for cause" to take effect.

Under the circumstances described, I do not find that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is not entitled to an Order of Possession, and I dismiss this Application in its entirety.

However, based on the Landlord's affirmed testimony, the Tenants are strongly cautioned that they are on formal notice that their actions and behaviours may jeopardize their tenancy.

As the Landlord was not successful in her claim, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Landlord's Application without leave to reapply.

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: March 20, 2020

Residential Tenancy Branch