



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was presented by its property manager ("**MM**") and counsel ("**PT**"). The tenants were assisted by an advocate ("**SM**").

The parties confirmed that they had received the other's evidence package and other required documents in advance of the hearing. I find that all parties were served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting in December 2013. Monthly rent is \$575 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$275, which the landlord continues to hold in trust for the tenant.

MM testified that the tenants pose a threat to the residential property and to its occupants by tampering with the smoke detectors and electrical panel in the rental unit and by keeping items stacked high-atop their stove.

He also testified that the tenants have kept the rental unit in such a condition as to allow cockroaches to infest it, and that this infestation is carrying over to other units in the residential property.

The tenant's advocate argued that the tenants have remedied the electrical and fire hazards in the rental unit and that the landlord's allegations about the infestation spreading are not supported by documentary evidence.

1. Fire Hazard

MM testified that the landlord discovered the tenants disconnected the smoke detectors in the rental unit on November 26, 2019 following an inspection of the unit. He also testified that the electrical panel breakers had been completely covered in duct tape so as to prevent them from tripping. He testified that this was a significant fire hazard. He also testified that the tenants kept non-consumables on the stove-top and large number of items in the rental unit which constitute a fire risk. He testified that the landlord posted a notice on the door of the rental unit demanding that the tenants remedy these problems.

MM testified that the landlord conducted a follow up inspection on January 1, 2020, and the tape on the electrical panel remained, the smoke detectors were still inoperable, and the rental unit had not been decluttered. He submitted photos into evidence supporting this testimony.

On January 2, 2020, the landlord issued a one month notice to end tenancy to the tenants, but this was cancelled for procedural (and not substantive) reasons by an arbitrator on March 16, 2020.

On February 4, 2020 the Fire Prevention Unit attended the rental unit. It issued an "order to comply" to the tenants, which included orders to "repair or replace hardwired smoke detectors" "remove tape covering the electrical panel", "keep the stove top and adjacent areas free of combustibles", and "maintain one-meter pathways in unit". The order noted that the smoke detectors "appeared to be tampered with" and that "the tape may prevent the fuse from functioning and poses a fire hazard." This order was submitted into evidence by the landlord.

MM testified that, on February 26, 2020, the fire department attended the rental unit again and discovered that the tape had not been removed from the breakers.

The landlord submitted a number of photographs of the rental unit taken during these inspections which show the overall condition of the rental unit. They depict the rental unit being extremely cluttered, with possessions covering countertops and cabinets, being stacked in the hallway and covering the bed. There appears to be very little room available to move about in the rental unit.

On March 16, 2020, following the hearing on the validity of the one month notice to end tenancy dated January 2, 2020, the landlord posted a notice to inspect the rental unit on the door of the rental unit effective the following day. On March 17, 2020, the landlord's agents attended the rental unit, but were refused entry by the tenants. The tenants called the police, who attended the rental unit. The landlord submitted video footage into evidence showing tenant KL yelling and screaming at a police officer, refusing to let the landlord's agent enter the unit, and demanding the police officer to "get out". The police officer did not leave, inspected the rental unit, and confirmed that smoke detectors were disconnected.

Due to *Residential Tenancy (COVID-19) Order*, MO M089 (*Emergency Program Act*) made March 30, 2020 (the "**Emergency Order**"), the landlord has not attempted to enter the rental unit since.

SM stated that following the March 16, 2020 police incident, the tenants have remedied the fire hazards. The tenants submitted photos of the rental unit which showed there is no longer tape on the electrical panel and that the stove is clear of debris. The tenants submitted documentation from the fire service that 3 smoke alarms were installed in the rental unit on April 8, 2020. Accordingly, SM argued, the tenants no longer posed a danger to the other occupants of the residential property.

The tenants themselves gave testimony, which I found at times to be erratic and difficult to understand. Tenant KL testified that she had never tampered with any of the smoke detectors in the rental unit, and that the tenants taped over the electrical panel because an agent of the landlord entered the rental unit in January 2020, removed its protective box, and bugs poured out of the panel. She denied that it was taped over in November 2019.

Tenant TN, on the other hand, denied that the tenants had *ever* taped over the electrical panel. He gave no evidence as to whether the tenants tampered with the smoke detectors.

MM conceded that smoke detectors may have been installed, and that the tape may have been removed from the panel since March 16, 2020, but that he had no way of knowing, given that the landlord has been unable to inspect the rental unit since then. However, he argued that the tenants have exhibited a pattern of non-compliance with the Act. He argued that it was likely that the tenants would resume their patterns of conduct after this hearing.

In support of this, he noted that the photograph of the electrical panel provided by the tenants shows that at least two different types of tape had been used to tape the breakers (they were different colours), and that the wall was painted after the tape had been applied (this was supported by a photo submitted by the landlord which shows yellow paint over top of the paint). He argued that this patterned of behavior was sure to continue in I refused to end this tenancy.

He also argued that the photos submitted by the tenants do not show any of the rooms of the rental unit other than the kitchen and a small portion of the hallway where the electrical panel is located, and that the living room is actually obscured by a sheet. He submitted that there is no evidence that the tenants have removed the significant amounts of clutter from the rental unit, and that this clutter continues to be a fire hazard.

2. Infestation

MM testified that the rental unit was infested with cockroaches. He testified that this infestation has spread to other rental units. In support of this the landlord submitted a photo of a cockroach, and an invoice from a pest control company that states "cockroach infestation noted in [rental unit]. Treatment cannot be done until the stiff is cleaned. Lot of stuff in the kitchen and all over the unit. The living conditions/style is causing spread of infestation."

I have no evidence as to the extent of the infestation, whether it originated in the rental unit, how many other units are infested, or statements of other occupants of the rental unit as to whether their units are infested.

As stated above, the tenant's advocate took the position that there was insufficient evidence to warrant an eviction on this basis.

Analysis

Section 56(2) of the Act states:

Application for order ending tenancy early

(2) 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, in the case of a landlord's application,

(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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord bears the burden of proof to show that the conduct of the tenants meets the threshold set out in section 56(2)(a) of the Act, and that the circumstances cause it unreasonable or unfair to wait for a notice to end the tenancy to be issued, as required by section 56(2)(b).

I note that the Emergency Order explicitly permits an arbitrator to issue orders of possession on applications made pursuant to section 56 of the Act.

Section 56 not only requires the landlord show that the tenant seriously jeopardized the safety of the landlord or another occupant or that they put the landlord's property at significant risk, but also that it would be unfair or unreasonable to wait for a one month notice to end tenancy be served. This additional requirement is unique to section 56 and makes it markedly more difficult for a landlord to obtain an order of possession.

Did the tenants seriously jeopardize the safety of other occupants or put the landlord's property at significant risk?

Based on the evidence provided by the parties, I am satisfied that the tenants have seriously jeopardized the safety of the other occupants of the residential property and have put the landlord's property (namely, the rental unit itself) at significant risk.

I rely on the order to comply provided to the tenants by the fire inspector which determined the smoke detectors have been tampered with and that taping the electrical panel poses a fire hazard.

I found the tenants' testimony to be contradictory and entirely unreliable. The photographic evidence is clear that the electrical panel was taped over and tenant KL admitted to having taped it over, yet tenant TN denied that the tenants taped it over. In the video of the police officer's visit to the rental unit, a police officer can be heard telling the tenants the fire alarms must stay connected, and the fire inspector confirmed that they were not functioning and appeared to have been tampered with. Yet tenant KL denied the tenants disconnected them.

The tenants' testimony is at odds with the documentary evidence, and where it and MM's testimony differs, I prefer MM's testimony.

I find that the tenants taped over the electrical panel and tampered with the smoke detectors. I find that the excess clutter in the rental causes a fire risk as well. Any one of these would constitute a significant risk to the landlord's property and seriously jeopardizes the other occupants by increasing the risk of a fire. Combined, the risk is magnified.

Accordingly, I find that the conditions of section 56(2)(a) have been satisfied.

Would it be unfair or unreasonable to wait for the tenancy to be ended pursuant to section 47?

By operation of the Emergency Order, landlords are prohibited from issuing notices to end tenancy for cause pursuant to section 47 of the Act. However, this does not have the effect of lowering the threshold for issuing orders of possession under section 56(2)(b). It would defeat the purpose of the Emergency Order to interpret it as to allow an order of possession to be granted if the criteria of section 56(2)(a) are met (which overlap substantially with the criteria of section 47), and the criteria of 56(2)(b) is only met by dint of section 47 not being available.

Accordingly, I understand the Emergency Order to require that section 56(2)(b) be applied without considering the fact that the ability to end a tenancy under section 47 is not available to a landlord at this time.

Prior to the Emergency Order being made, the typical wait time for a hearing for an application for an order of possession pursuant to a notice to end tenancy for cause

would be six weeks. Such an application could be filed as soon as 10 days after the notice to end tenancy for cause was issued. Accordingly, I interpret section 52(2)(b) to mean that it would be unreasonable or unfair to the Lower Unit Occupant to wait seven weeks for the tenancy to end.

Based on the photographs submitted by the tenant, I find that tape from the electrical panel has been removed. The tenants testified that it remains removed. There is no evidence to contradict this, but I have commented about the credibility of the tenants. I also find that new smoke detectors have been installed in the rental unit, based on the documents the tenants submitted.

However, I have no documentary evidence showing that the rental unit has been cleaned or decluttered. Indeed, the only photograph I have on any room of the rental unit shows a sheet hanging from the wall obscuring the view into the living room (which was previously shown to be quite cluttered) from the kitchen (which does appear to have been tidied). I have no evidence before me as to the condition of the living room, hallway, bedroom, or bathroom of the rental unit, all of which are seen to be cluttered in the photographic evidence submitted by the landlord.

Given that the tenants denied entry to the landlord on March 16, 2020, and that, due to the Emergency Order, the landlord is no longer able to gain access to the rental unit, the power to provide documentary evidence as to the current condition of the rental unit lies entirely with the tenants. They have failed to provide such evidence. Based on this failure, and the fact that they hung a sheet in the kitchen obscuring the view of the living room, I draw an adverse inference against the tenants, and find that the rental unit has not been decluttered. Accordingly, I find that it continues to pose a fire risk, and that the tenants continue to jeopardize the safety of other occupants and continue to put the landlord's property at significant risk.

I find that it would be unfair to the landlord and the other occupants of the residential property to wait for the tenancy to be ended according to section 47.

I grant the landlord's application and issue an order of possession effective two days after the landlord serves it on the tenants.

Pursuant to section 71(1) of the Act, as the landlord has been successful, it is entitled to recover its filing fee from the tenants. Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this amount. It must comply with the Act regarding the balance of the security deposit.

Conclusion

Pursuant to section 56 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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: April 23, 2020

Residential Tenancy Branch