



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on March 22, 2020 (the “Application”). The Landlords applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlords also sought reimbursement for the filing fee.

The Landlords named A.M. as the tenant on the Application. The written tenancy agreement in evidence names the numbered company as the tenant. Given this, the Application should be in the name of the numbered company and I amend the Application accordingly. I address service of the hearing package and evidence below. I note that I am satisfied service on A.M. for the numbered company is sufficient given A.M. signed the written tenancy agreement for the numbered company and A.M. is the person living in the rental unit.

The Landlords appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlords who did not have questions when asked. The Landlords provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlords’ evidence.

The Landlords confirmed the hearing package was sent to A.M. at the rental unit by registered mail on March 23, 2020. The Landlords had submitted a customer receipt with Tracking Number 1 on it. I looked this up on the Canada Post website which shows the package was delivered March 24, 2020.

The Landlords confirmed the evidence was sent to A.M. at the rental unit by registered mail on April 07, 2020. The Landlords had submitted a customer receipt with Tracking Number 2 on it. I looked this up on the Canada Post website which shows notice cards were left in relation to the package April 08 and 13, 2020.

Based on the undisputed testimony of the Landlords, customer receipts and Canada Post website information, I am satisfied pursuant to section 71(2) of the *Act* that the Tenant was sufficiently served with the hearing package and evidence for this hearing. Pursuant to section 71(2) of the *Act*, and considering section 90(a) of the *Act*, I am satisfied the Tenant was served with the hearing package March 28, 2020 and the evidence April 12, 2020. I find the hearing package was served in time and in accordance with rule 10.3 of the Rules of Procedure (the "Rules"). I am not satisfied the evidence was served in accordance with the Rules; however, nobody appeared for the Tenant at the hearing to make submissions on this issue and therefore I have admitted the evidence.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the Landlords. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The agreement is between the Landlords and Tenant. The tenancy started September 15, 2019 and is for a fixed term ending September 15, 2020. Rent is \$6,750.00 per month. The Landlords confirmed rent is due on the first day of each month. The Tenant paid a \$3,375.00 security deposit. The agreement is signed by the Landlords and for the Tenant. The Landlords confirmed A.M. signed the agreement for the Tenant.

The Landlords testified as follows in relation to the basis for the Application.

A.M. has caused massive damage to the house. There was a major leak in the house that A.M. did not report. When the Landlords tried to access the house to locate the source of the leak and address it, A.M. or others on behalf of A.M. and the Tenant prevented the Landlords and trades people from doing what was necessary to determine the source of the problem and to address it. The house smells and the Landlords believe there is now mold in the house due to the leak.

A.M. has denied the Landlords access to the rental unit. The Landlords gave notice to enter and did enter on March 18, 2020 and March 20, 2020. On both dates, A.M. or the Tenant had a security guard present who would only allow the Landlords and trades people to access part of the house. The plumber could not determine the source of the leak on March 20, 2020 because he was not permitted access to the necessary areas of the house. The Landlords also gave notice to enter with someone to cut the drywall to see the extent of the leak. A.M. posted a note on the door denying entry. The Landlords tried to enter but their key did not work as A.M. has changed the locks.

During one of the entries, the Landlords noticed that A.M. has cut a hole in the drywall to expose the radiant heating pipes.

The Landlords submitted an email from a tradesperson who confirms their testimony that A.M. has denied access or had a security guard present that would not allow full access to the house to assess the leak. The email states that "there is definitely significant damage apparent from the external review" of the leak.

The Landlords submitted a signed letter dated March 20, 2020 from a plumber confirming their testimony about the plumber being denied full access to the house to assess the water leak. The letter states that "there is significant water damage" in the house.

The Landlords submitted a photo of the security guard's identification and a letter from A.M. that refers to the security guard.

The Landlords submitted photos of the ceiling damage caused by the leak as well as the hole cut in the drywall exposing the radiant heating pipes.

A.M. has removed smoke and carbon monoxide detectors throughout the house which is an issue for insurance coverage.

On January 17, 2020, Landlord R.D. attended the rental unit. He smelled gas and called the gas company. The gas company attended and said someone had tampered with the valve.

A.M. made verbal threats about damaging or burning down the house. The Landlords submitted an email in which Landlord R.D. set out what the Tenant had said to him. It states that the Tenant said, "I can damage your house or burn it down and there is nothing you can do about it".

There was an incident where Landlord S.D. attended the house with her father. While Landlord S.D. and her father were walking away from the house, A.M. ran after Landlord S.D. and threw papers at her and told her she had been served. A.M. did not stop running at Landlord S.D. until her father stepped forward. The papers landed three feet away from Landlord S.D. Landlord S.D. feared for her safety and called police who attended.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlords, as applicants, have the onus to prove the circumstances meet this two-part test.

Based on the undisputed testimony of the Landlords and documentary evidence referred to above, I am satisfied of the following. There has been a leak in the rental unit. The leak or resulting water damage is significant. The Landlords and trades people have entered the rental unit, or attempted to enter the rental unit, to assess the leak and water damage and address it. A.M. or his security guard have prevented the Landlords and trades people from accessing the house such that the leak and water damage can be assessed and addressed.

Based on the undisputed testimony of the Landlords, I am satisfied A.M. referred to damaging or burning down the house and am satisfied Landlord R.D. understood this to be a threat to the house.

Given the above, I am satisfied the Tenant and A.M. have put the Landlords' property at significant risk. I am also satisfied it would be unreasonable to require the Landlords to wait for a One Month Notice to take effect. I am satisfied based on the evidence referred to that this water leak should already have been addressed. I am satisfied water leaks should be addressed immediately to stop the issue and prevent further damage. I am satisfied the Landlords should not have to wait for a One Month Notice to take effect to end this tenancy so they can access their property and address the leak and water damage.

Further, I find the comment made by A.M. to Landlord R.D. about damaging or burning down the house to be serious and am satisfied the Landlords should not have to wait for a One Month Notice to take effect to end this tenancy.

I am satisfied the Landlords have met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlords an Order of Possession for the rental unit which will be effective two days after service on the Tenant pursuant to section 56(2) of the *Act*. **I note that this Order of Possession ends this tenancy between the Landlords and Tenant and requires all tenants and occupants, including A.M., to vacate the property.**

Given the Landlords were successful, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. I issue the Landlords a Monetary Order for this amount.

Conclusion

The Landlords are issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court. **I note that this Order of Possession ends this tenancy between the Landlords and Tenant and requires all tenants and occupants, including A.M., to vacate the property.**

The Landlords are entitled to reimbursement for the \$100.00 filing fee and I issue the Landlords a Monetary Order for this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

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: April 21, 2020

Residential Tenancy Branch