



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ascent real estate management
company and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order ending the tenancy early and an order of possession - Section 56;
and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

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

Is the Landlord entitled to an order of possession and recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on July 1, 2018. Rent of \$950.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit.

The Parties were referred to the elements contained in section 56 of the Act and the higher burden of proof required for this claim as opposed to a claim for an order of possession pursuant to giving a notice to end the tenancy for cause.

The Landlord states that as a result of a complaint of smelling smoke from the Tenant's unit a day before, the Landlord inspected the Tenant's unit on June 23, 2020. The Landlord states that they could not enter through the front door of the unit located on the ground floor, so they accessed the unit from the balcony entrance. The Landlord states that the front door was covered with items blocking the door. The Landlord states that the unit was also filled with boxes. The Landlord states that they also found the following:

- cardboard was found around the elements of the stove with plastic wrap around the control area;
- a hose was connected from the kitchen tap leading to the back of the dishwasher;
- a tiny little fan was connected by wires to a light fixture on the ceiling; and
- a hose was connected to the fire sprinkler.

The Landlord states that upon making this discovery the Tenant was not told to remove anything as they did not want the Tenant to do anything more. The Landlord states that nothing was done by the Landlord to remedy the issues. The Landlord states that no inspection was carried out by any electrician or plumber and no repairs were done. The Landlord states that it has no supporting evidence beyond their own evidence of these issues presenting an immediate and severe risk to the property. The Landlord argues that the issues found presented a serious jeopardy and put the property at significant risk. The Landlord provides photos. The Landlord states that it has no evidence or submissions to make as to why they could not wait to serve a one month notice to end the tenancy for cause.

The Tenant states that the hose was attached to the kitchen tap with an adaptor and was not hooked up to anything. The Tenant states that it uses the hose to bring water to its own water filter. The Tenant states that it did not splice any wiring for the small fan on the ceiling. The Tenant states that it set the fan into a cold air vent to circulate

air when it was hot and that the fan was connected only to the electrical outlet on the wall. The Tenant states that no hose was attached to the sprinkler system.

It is noted that after the Landlord was asked how the situation could be an emergency if the Tenant was not told to remove items and as the Landlord did not do anything itself, the Landlord became agitated stating the it did not understand the procedures and had never “done this before”. The Landlord stated that it was feeling very uncomfortable with the questions posed by the arbitrator. Following these submissions, the Landlord was again given explanation about evidence and the burden of proof required to substantiate its claim. After hearing the Tenant’s evidence and stating that it had no evidence or submissions on why they could not wait for a one month notice to end tenancy for cause to take effect, the Landlords left the hearing before it was completed.

Analysis

Section 56(2)(a) (ii) and (iii) of the Act provides that 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, that the tenant or a person permitted on the residential property by the tenant has

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or
- put the landlord's property at significant risk; 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. Ending a tenancy is a very serious matter and requires sufficient proof in the form of evidence. Ending a tenancy without the provision of any notice under the above section carries a higher burden of proof than would be required for a one month notice to end tenancy for cause. I note that the Landlord’s photo of the apparent connection of a hose to the sprinkler system does not clearly show any clear connection or clear image of a hose due to the distance in the photo. The photo containing a bed appears to show an orderly space. There is no tampering shown in

the photo supplied by the Landlord as evidence of tampering with the electrical system and the Landlord gave no evidence of this issue. While the Landlord has some evidence of risk and jeopardy caused by the Tenant, given that the Landlord did nothing about the situation and said nothing to the Tenant about addressing their concerns, given that the Landlord made no submissions on why it could not have waited for a one month notice to end tenancy for cause, and considering the Tenant's evidence of not having tampered with any electrical or plumbing apparatus, I find that the Landlord has not provided sufficient evidence to substantiate that an immediate and severe risk was caused by the Tenant thereby requiring an early end to the tenancy. I dismiss the application.

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: July 13, 2020

Residential Tenancy Branch