



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenant.

Both parties attended the hearing and provided testimony. The Tenant confirmed receipt of the Landlord's application and evidence package. The Landlord confirmed receipt of the Tenant's evidence package. Neither party took issue with the service of these packages and were prepared to respond to the documents.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

During the hearing, the Tenant had to be warned multiple times not to interrupt and speak over others in the hearing. After being warned 3 times, the Tenant was placed on mute in the conference call until the Landlord had finished presenting his application and evidence. Then, the Tenant was given a chance to respond, once the Landlord had finished. After the Tenant was taken off mute, the hearing proceeded normally.

Issue(s) to be Decided

- Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord stated that the Tenant has lived in the rental unit for a few months now, and recently it became apparent that the Tenant was not cleaning properly and a smell was emanating from his rental unit. The Landlord explained that he lives adjacent to the Tenant's unit, and his door is only a few feet from the Tenant's door. The Landlord stated that the Tenant has often been late paying rent, and he has been difficult to deal with in general, but the main issue is the mess created in his rental unit.

The Landlord explained that on May 3, 2020, when he went to collect rent from the Tenant, he noticed a bad smell coming from the rental unit. The Landlord mentioned this to the Tenant at that time. The Landlord stated that on May 17, 2020, he noticed the smell again and it was worse. The Landlord stated that he inspected the rental unit on June 2, 2020, along with a restoration company (a copy of the estimate was provided). The Landlord explained that he took photos, and obtained an inspection report from the remediation company. The photos show accumulation of garbage, dirty dishes, and a general mess in most areas of the unit. The report states that visible mold growth was seen on many surfaces, and the contents of the suite would largely be considered "biohazards" due to the neglect. The Landlord stated that he acknowledges the Tenant has since cleaned up all the debris, but he worries that the surfaces still need proper cleaning, as residue and smell is likely still everywhere.

The Tenant stated that he believes some of the smell is from the garbage cans which the Landlord stores outside his door area. The Tenant acknowledged that he should not have let his place get as messy as he did, but he stated he has since cleaned up, and there really isn't as big of an issue as the Landlord is saying. The Tenant stated that the Landlord has threatened him with eviction so many times and the relationship is not going well anymore. The Tenant stated that he has dealt with the source of the problem, and the only thing he needs to do is do a final surface cleaning.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, there is sufficient cause; and, 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 to take effect.

I note the following portion of the Act:

Landlord and tenant obligations to repair and maintain

32 (2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I have carefully considered the evidence before me. I note that, since the Landlord filed this application, the Tenant has since cleaned up the bulk of the debris (as per the photos), which was causing the issue. That being said, I find the Landlord's photos show that, leading up to this issue, the Tenant was not complying with section 32(2) of the Act, as the mess was such that his rental unit did not comply with reasonable, cleanliness and sanitary standards. Although the Tenant was in breach of section 32(2) of the Act, I find there is insufficient evidence to show that the issue is immediate or severe, such that it warrants an early end to the tenancy, pursuant to section 56 of the Act. I dismiss the Landlord's application for an order of possession, as I do not find it meets the criteria for an early end to tenancy, as laid out above. Although some cleaning may still be required to disinfect surfaces, I do not find there is sufficient evidence to show that there is an immediate and severe risk to the property or the Landlord.

Given the Landlord was not successful in this hearing, I decline to award him the recovery of the cost of the filing fee he paid to make this application.

Conclusion

The Landlord has not met the burden to prove the tenancy should end early. Therefore, the Landlord's Application is dismissed without leave to re-apply and the tenancy will continue until such time it is ended in accordance with the Act.

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: July 02, 2020

Residential Tenancy Branch