



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

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 the issuance of an Order of Possession pursuant to section 56; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties confirmed that they had exchanged their documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave the following testimony. The tenancy began on June 1, 2013 with a current monthly rent of \$1003.00. The landlord testified that on July 14, 2020 he became aware that a water leak was coming from the subject unit. The landlord had a "technician" go into the unit to make the repairs until a plumber could attend. The landlord testified that the technician slowed the leaked significantly but not completely. The landlord testified that while in the unit the technician noted that it was difficult to access the leak as the tenant had turned both bedrooms into storage with items as "high as man".

The landlord testified that he spoke to the tenant on July 15, 2020 to advise that on July 16, 2020 the plumber would come and fix the leak completely. The landlord testified that the tenant began screaming at him and told him that she would never allow access to the unit. The landlord testified that on July 17, 2020 the plumber and contractor entered the unit below the subject unit and bypassed the hot water heating line to the subject unit and installed shut off valves to the subject unit. The landlord testified that this was only a short-term fix and that they will need to access the subject unit to complete the repair. The landlord testified that as a result of the tenants' refusal to allow access; other tenants were given reduced hot water, water seeped into the unit below the subject unit and into the electrical room of the building. The landlord testified that the tenancy should end early and that he be given an order of possession as the tenant poses a risk to the building, the landlord and other tenants.

LM gave testimony on behalf of the landlord. LM testified that she could hear the subject tenant swearing and yelling at the landlord but wasn't sure when that was, and noticed water leaking down the exterior of her unit.

The tenants gave the following testimony. KP testified that the landlord and the two other men that were with him were not wearing masks and not observing physical distancing. DP testified that she has a compromised immune system and had just recently been in hospital when this incident occurred. DP testified that she allowed the technician to attend to the leak on July 14, 2020. DP testified that when the landlord returned unannounced the following day with two other men, and that none of them had masks on she became angry and upset. DP testified that she did yell and scream at the landlord because she was taking medication that makes her "weird".

DP testified that she has significant health issues and that the landlord was not following the COVID-19 guidelines set out by the Branch. DP testified that although she denied access to the landlord on July 15, 2020, she spent the rest of the day cleaning her unit up and making sure the plumber would have access on July 16, 2020 as instructed. The tenant testified that she waited in her apartment until 1:30 pm on that day before leaving to go to the hospital for an appointment, yet the plumber did not attend. The tenant testified that the landlord has not arranged access to the unit since that day despite the repair being left incomplete.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an

Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has 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.

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to a landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of the notice to end tenancy to take effect, such as a notice given under section 47 of the Act for cause. At the hearing the landlord must provide convincing evidence that justifies not giving a notice under section 47.

On this occasion I find that the landlord has not provided me with sufficient evidence to end the tenancy early for the following reasons. It is worth noting the landlord's testimony was contradictory on a key point. The landlord advised the tenant the plumber would come on July 16, 2020 yet the repair was conducted on July 17, 2020. The landlord had another opportunity to serve the tenant notice that he would enter or to attempt to address the access issue after July 15, 2020 but did neither. It was apparent that the relationship between the parties is an acrimonious one. Due to the nature of their relationship the communication between the parties broke down quickly to the point that they no longer spoke to each other.

The tenant testified that she waited in the unit on July 16 until 1:30 p.m. to have the landlord conduct the repair, but he did not attend. I find that despite the tenant's refusal to allow access on July 15, 2020, the landlord and those working with him were not following the proper COVID 19 guidelines as set out by the Branch. The tenant did grant access to the "technician" on July 14, 2020 and access has been available since July 16, 2020. The landlord confirmed that he has not conducted the full and definitive repair in the unit. The tenant testified that the landlord has not made any attempts to arrange access to the unit since July 15, 2020. Based on the above, and on a balance of probabilities, I find that the landlord has not provided sufficient evidence to show that the "*tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord*", as applied for in their application, accordingly, I dismiss the landlords application.

As the landlord has not been successful in their application, they are not entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The landlords application is dismissed in its entirety 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: August 04, 2020

Residential Tenancy Branch