



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 as a result of the Landlord's Application for Dispute Resolution, made on September 16, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on June 1, 2020. Currently, the Tenant pays rent in the amount of \$1,450.00 which is due to the Landlord on the last day of each month. The Tenant paid a security deposit in the amount of \$725.00, however, the Landlord stated that she has retained \$25.00 of the Tenant's deposit towards painting costs.

The Landlord stated that she is seeking to end the tenancy early based on the fact that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The Landlord stated that she has also served the Tenant with a One Month Notice to End Tenancy on September 4, 2020.

The Landlord stated that there have been several issues throughout the tenancy. The Landlord stated that the Tenant has been littering around the property, starting his motorcycle in the late evenings, and moving the Landlord's possessions, including some plywood and recycling bins. The Landlord stated that she tripped on some plywood which the Tenant had moved into the walkway, which resulted in the Landlord injuring her hand. The Landlord stated that the common areas do not belong to the Tenant therefore he should not be touching any items found outside the rental unit.

The Landlord stated that the Tenant has been cautioned on several occasions about these issues in writing, however, the issues continue. As such, the Landlord is seeking to end the tenancy early. If successful, the Landlord is also seeking to recover the filing fee paid to make the Application.

The Tenant responded by stating he is interested in ending the tenancy as he feels as though the Landlord is being unreasonable and is breaching his quiet enjoyment of the rental unit. The Tenant stated that he does not agree with the Landlord's statements but that he has not yet found an alternate residence to move to.

Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the

Act. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the Act, which states:

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...

- (a) *The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.***

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End

Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, the Landlord indicated that the reason for seeking an order of possession was in relation to ongoing concerns regarding littering, noise, and the Tenant moving the Landlord's items outside in the common areas.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlord's Application, without leave to reapply.

As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

The Landlord has issued a one month notice to end tenancy for cause; however, they had insufficient evidence to prove it should end earlier under section 56. The tenancy will continue until 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: October 07, 2020

Residential Tenancy Branch