



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FirstService Residential BC LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ET, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act ("emergency eviction")

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the parties had exchanged their respective hearing materials upon each other. Although the tenant may have served her materials upon the landlord late, the landlord's agent was agreeable to admittance of the tenant's evidence. Accordingly, I admitted the hearing materials of both parties into evidence and I considered them in making this decision.

I noted that the landlord had applied for an emergency eviction but in the details of dispute the landlord referred to a Mutual Agreement to End Tenancy with an effective date of October 31, 2020 and that the remedy sought by the landlord required clarification. The landlord's agent acknowledged that she had intended to apply for an Order of Possession based on a Mutual Agreement to End Tenancy and she did not realize she had applied for an emergency eviction.

I declined to amend the Application for Dispute Resolution to deal with a request for an Order of Possession based on a Mutual Agreement to End Tenancy as emergency eviction hearings are reserved and scheduled on a priority basis for the most severe of circumstances that exist at the time of filing and must not be used to obtain a faster hearing date and then amended to deal with another issue. Although I accepted that the landlord did not deliberately attempt to queue jump, to preserve the integrity of the

emergency eviction process I declined to amend the Application for Dispute Resolution to deal with an Order of Possession based on a Mutual Agreement to End Tenancy. The parties were informed that the landlord may make an application for an Order of Possession based on a Mutual Agreement to End Tenancy under another Application for Dispute Resolution.

The landlord's agent stated that the landlord would still like to present evidence with a view to ending the tenancy under section 56 of the Act as it remains of the position that the tenant is putting the property at the lives of other tenants at significant risk due to hoarding and causing a fire on August 1, 2020. The tenant confirmed that she was prepared to respond to the evidence concerning the events of August 1, 2020. Accordingly, I continued to hear from the parties with a view to determining whether the landlord has a basis for obtaining an early end of tenancy and Order of Possession under section 56 of the Act.

Issue(s) to be Decided

Has the landlord established that the tenancy should be ended early and the landlord provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy started on January 1, 2019 and the tenant is required to pay rent of \$975.00 on the first day of every month. The rental unit was described as being a "studio" style apartment in a multiple unit building operated by the landlord.

It is undisputed that on August 1, 2020 there was a fire in the rental unit that resulted from the oven being turned on and the tenant leaving the rental unit. The fire was largely contained to the stove/oven of the rental unit. Afterwards, on August 1, 2020 the tenant and the landlord's agent signed a Mutual Agreement to End Tenancy with an effective date of October 31, 2020.

Landlord's position

The landlord submitted that there has been an issue with the tenant hoarding in the rental unit and last year the landlord attempted to end the tenancy for cause but the One Month Notice was cancelled pursuant to a dispute resolution proceeding. When the fire broke out on August 1, 2020 the firefighters could not hardly move around in the rental unit due to all the clutter.

The landlord's agent took a photograph of the stove/oven area of the rental unit on August 1, 2020. The photographs show the inside of the oven had some of the tenant's possessions and what appears to be sprayed with some sort of fire retarding foam. On the face of the stove/oven is scorched and only a couple of inches away, on top of the stove top, are towels and plastic containers and other dishes.

The landlord's agent submitted that a week or two after the fire the landlord replaced the stove/oven. The landlord requested payment for replacement of the stove/oven from the tenant to which the tenant declined to take responsibility for the cost.

In mid-September 2020, the landlord's agent spoke with the tenant and the tenant informed the landlord that she would not be moving out and the burned oven was defective. The landlord offered to waive the cost of the new stove/oven but the tenant declined the offer. The landlord then filed this Application for Dispute Resolution on October 2, 2020.

The landlord's agent acknowledged that after replacing the stove/oven in August 2020 the landlord has not entered or otherwise inspected the rental unit.

Tenant's position

The tenant acknowledged that she bumped the oven knob on her way to leaving the rental unit without realizing the oven turned on and this resulted in the oven fire. The tenant was of the position the knob was defective as a "flick of the finger" was all it took to turn on the oven.

I noted from the photographs provided to me by the landlord, the tenant had items stacked on the stove top, including flammable items (towels) and items that may melt (plastic), to which the tenant acknowledged she has dried her dishes by placing them on towels on the stove-top because she lives in a small studio apartment and she does not have a dish rack. The tenant also acknowledged that she stored pots and pans in the oven due to a lack of storage space.


I impressed upon the tenant that it is irrelevant how big or small a rental unit is and that a tenant must not do things that put the landlord's property or the health and safety of other occupants at risk by placing flammable items on appliances such as a stove/oven or heater that have potential to cause a fire. I also suggested to the tenant that if she has a small unit and lack of in-unit storage, she is responsible for ensuring she either

limits the amount of possessions in her unit or obtain other storage options as necessary. The tenant eventually indicated she understood this and agreed that she would not put anything flammable on the stop top or in the oven again.

After hearing from the parties, I put the tenant on notice that I was ordering the tenant to:

For the remainder of time she is possession of the rental unit she must not place or put anything that is flammable or may melt in the oven, on the stop top, or on any other heat source such as a heater or source of flame.

Further, I put the tenant on notice that her failure to comply with my order may be grounds for the landlord to make another application for an emergency eviction under section 56 of the Act or grounds for the landlord to serve the tenant with a One Month Notice to End Tenancy for Cause citing the reason:

 Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The tenant did not object to such an order.

I also made it clear that the landlord remains at liberty to pursue enforcement of the Mutual Agreement to End Tenancy despite any of my findings with respect to the landlord's request for an emergency eviction and order issued to the tenant in this decision.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

56 (1) A landlord may make an application for dispute resolution to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
- (b) granting the landlord an order of possession in respect of the rental unit.

(2) 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,

- (a) the tenant or a person permitted on the residential property by the tenant has 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 landlord's 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 landlord has the burden of proof and the landlord's burden is high as section 56 is intended to apply in the most serious of circumstances.

In this case, it is undisputed that a fire occurred in the oven in the rental unit on August 1, 2020 after the tenant's actions caused the oven to turn on and then the tenant left the rental unit. While I accept that a fire is a serious and significant health and safety concern, in making this decision it is before me to determine whether an emergency eviction under section 56 is warranted. I have considered that the landlord made this application on October 2, 2020, which is more than two months after the fire took place in the tenant's oven. I am of the view that if the landlord is of the position the fire warrants an emergency eviction the landlord would have pursued this remedy shortly after the fire occurred, not two months later. Rather, it appears to me that the landlord was satisfied with entering into a Mutual Agreement to End Tenancy as a resolution to the matter and that this application was made only after the tenant indicated she would not be moving out in accordance with the Mutual Agreement.

The landlord submitted that in addition to causing a fire, the tenant's unit was overly cluttered and the clutter inhibited the firefighter's ability to move around in the rental unit. However, the photographs provided by the landlord were very limited and focused primarily on the stove/oven area and I am unable to see the entire kitchen, let alone the rest of the rental unit. In the photographs, I see there are possessions on the stop top that are flammable and subject to melting but I am able to see some of the floor area but I am unable to see that the firefighters would be inhibited in their ability to move around in the rental unit. Nor, did the landlord provide a written report from the fire department that speaks to excessive clutter or hoarding. As such, I find there is insufficient evidence to substantiate the landlord's position regarding hoarding.

In keeping with the above, I dismiss the landlord's application for an order to end the tenancy early and obtain an order of Possession under section 56 of the Act. However, pursuant to the authority and discretion afforded me under section 62 of the Act, I issue the following order to the tenant:

I ORDER the tenant, effective immediately on the date of this hearing and for the remainder of time the tenant is possession of the rental unit, the tenant must not allow anything that is flammable or may melt in the oven, on the stop top, or any other heat source or source of flame.

Further, failure to comply with my order above may be grounds for the landlord to make another application for an emergency eviction under section 56 of the Act or serve the tenant with a One Month Notice to End Tenancy for Cause.

Conclusion

The landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act is dismissed.

The landlord remains at liberty to pursue enforcement of the Mutual Agreement to End Tenancy by making another Application for Dispute Resolution.

I have issued an order to the tenant in this decision that takes effect immediately and shall remain in effect for the remainder of the time the tenant is in possession of the rental unit.

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: November 20, 2020

Residential Tenancy Branch