



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord and the landlord's daughter ("**SS**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, her daughter, and I were the only ones who had called into this teleconference.

SS testified that she served the tenant with the notice of dispute resolution proceeding form and supporting evidence on October 5, 2020 by posting it on the door of the rental unit and by sending it to the tenant via registered mail. SS provided a tracking number to confirm the registered mailing, and a photograph of the door with the required documents posted on it. I find that the tenant is deemed served (pursuant to section 71 of the Act) with the required documents in accordance with the Act and the Rules of Procedure, notwithstanding the fact that the landlord did not submit a Proof of Service form in advance of the hearing.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of SS, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of SS's claims and my findings are set out below.

The tenant and the landlord's husband entered into a written tenancy agreement starting April 27, 2019. Monthly rent is \$800. The landlord's husband passed away in August 2019, and the landlord assumed the tenancy agreement. The tenant paid the landlord's husband a security deposit of \$400, which the landlord continues to hold in trust for the tenant. The rental unit is the basement suite of a single detached home.

On July 22, 2020, the parties signed a mutual agreement to end tenancy, with an effective date of Sept 30, 2020. The tenant did not move out of the rental unit.

SS testified that the tenant has caused significant damage to the rental unit. She testified that the tenant has destroyed the tile floor in the bathroom, damaged the living room hardwood floor to the extent that it must be replaced, and allowed black mold to grow throughout the rental unit. She submitted before and after photos of the bathroom, in which the damage caused by the tenant to the floors can be seen: the entire tile floor appears to have been destroyed and removed, and the bare concrete underneath remains. Large patches of black mold are visible on the walls in the photos of the bathroom taken after the tenancy began. The landlord provided a video taken in the living room of the rental unit which shows significant damage to the floor, including a hardwood panel which appears to have been ripped off the floor.

SS testified that the tenant has recently been posting correspondence between SS and the tenant to the tenant's social media account. These posts include SS's cell phone number, and include commentary from the tenant in which:

- 1) The tenant claims the landlord tells "lies and lies"
- 2) Alleges the landlord "planted demons in her home"
- 3) Claims the landlord is a "traitor to her own fellow Muslims"
- 4) Alleges that the landlord "rape people in their basement"
- 5) Allege the landlord uses "black magic removal"
- 6) Alleges the landlord uses "ghost/jinns"
- 7) Calls the landlord a "disgusting disgrace"

SS testified that she and the landlord are concerned for their safety given the tenant's erratic comments.

Analysis

Early Termination of Tenancy applications are governed by section 56(2) of the Act, which reads:

(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.

Rule of Procedure 6.6 sets out the standard by which I am apply when assessing whether to grant the relief sought in an application. It states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must satisfy me, on a balance of probabilities, that she has fulfilled the requirements set out in section 56(2) of the Act.

After considering the evidence presented and the testimony of the landlord, I find that the landlord has discharged her evidentiary burden and demonstrated that an order for an early end to the tenancy is required.

I find that the tenant has caused extraordinary damage to the residential property. The entirety of the bathroom floor has been destroyed. The damage to living room floor is significant. "Extraordinary" means going beyond what is usual or regular, or exceptional

to a marked extent. The damage to the bathroom and living room floor meets this definition.

Additionally, I find that it would be unreasonable or unfair for the landlord to wait for a notice to end tenancy to be issued under section 47 of the Act due to the fact that there exists a mutual agreement to end the tenancy effective September 30, 2020, and due to the negative comments made by the tenant about the landlord on her social media account. It would be unfair for the tenancy to continue any longer than it has to as, to do so would merely delay the inevitable (an end to the tenancy due to the mutual agreement) and allow more time for the tenant to continue her negative comments on social media.

As such, I order that the tenant provide the landlord with vacant possession of the rental unit within two days of being served with this decision and the attached order of possession in accordance with the Act.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this. The landlord must address the balance of the security deposit in accordance with section 38 of the Act.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order by the landlord.

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 24, 2020

Residential Tenancy Branch