



Dispute Resolution Services

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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 tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:57 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord 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 and I were the only ones who had called into this teleconference.

The tenant filed this application on November 8, 2020. On November 13, 2020, the RTB provided him with a notice of expedited hearing, which he served, along with his evidence package, on the tenant that same day, by posting it to the door of the rental unit via registered mail. I find that this complies with the service requirement for expedited hearings. As such, I deem the tenant served with these documents on November 16, 2020, three days after they were posted, pursuant to sections 89 and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

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

Background and Evidence

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

The parties entered into a written, fixed-term tenancy agreement starting September 1, 2020 and ending October 30, 2020. Monthly rent is \$2,500 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1,250, which the landlord continues to hold in trust for the tenant. The tenant did not vacate at the end of the term, and the tenancy is converted to a period tenancy per section 44(3) of the Act.

The rental unit is located on the upper floor of a single detached house. The landlords live in the lower floor.

The landlord testified that shortly after the tenant moved in, he set up a portable washing machine in the rental unit. The tenant connected the washing machine to an exterior water tap on the side of the house. He testified that the tenant set up a makeshift drainage system using off-the-shelf PVC pipes to remove wastewater from the washing machine. He testified that this drainage system did not work properly and caused water to leak on the floor of the rental unit.

On September 28, 2020, the landlord testified that water started leaking into the lower unit from the rental unit, which damaged the drywall and flooring in the lower unit. He provided photographs on the water-damaged laminate flooring. He testified he advised the tenant of this leak and demanded that he stop using the portable washing machine. The landlord disconnected the portable washing machine from the exterior tap.

The landlord testified that, on October 25, 2020, there was another flood in upper unit causing water to pour into the lower unit. He testified that the tenant had hooked the washing machine up to a second exterior water tap located on the other side of the house. This flood caused more of the same damage to the lower unit and caused the basement breakers to trip. The landlord again demanded that the tenant disconnect the washing machine. He testified he attempted to enter the rental unit on the day of the flood, but that the tenant would not let him in. The following day, the landlord served the tenant with a notice of inspection for the following day. He testified that the tenant again denied him entry to the rental unit, notwithstanding the notice of inspection.

The landlord testified that the upper unit flooded a third time on November 18, 2020. He submitted videos of this flood into evidence which show water pouring down the walls of the lower unit and pooling on the laminate flooring. He testified that he immediately went to the rental unit. The tenant was not there. A female occupant of the rental unit let him in. He testified that he saw the woman sopping up water surrounding the portable washing machine with towels. He testified that it was connected to the bathroom sink with a hose. He submitted a photo of this, and photos of the water pooling on the floor of the rental unit into evidence.

The landlord testified that a fourth flood occurred around 2:40 am on November 22, 2020. He testified that water poured into the lower unit from the rental unit. He testified that a hole appeared in the ceiling of the lower unit bathroom and water and debris fell

into the bathtub. He submitted photos of this. He testified that he attempted to enter the rental unit, but that the tenant prevented him. He testified that he gave written notice later that day to enter, but that the tenant prevented him and his plumber from entered on four occasions. He testified that the plumber refused to attempt to enter any more, due to the tenant uses aggressive, profane language towards him.

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.

As such, the landlord must satisfy me, on a balance of probabilities, that the requirement of 56(2)(a) and (b) are met.

Based on the uncontroverted testimony of the landlord, corroborated by the photographs and videos he submitted into evidence, I find, by causing the repeated flooding of the rental unit and lower unit, the tenant has unreasonably disturbed the landlord, put the landlord's property (the residential property) at significant risk, and has caused extraordinary damage to the residential property. I am satisfied that the tenant caused these floods based on the fact that the water poured from the rental unit into the lower unit, that the set up a portable washing machine in the rental unit, and that the

landlord saw an occupant of the rental unit using towels to sop up water around the portable washing machine.

I find that the damage caused by the floods to be extraordinary and that that floods have put the residential property at risk of mold damage. It is likely that significant repairs will be required to remediate the water damage.

I find that it would be unfair to the landlord if he was required to end the tenancy pursuant to section 47 of the Act (for cause). The tenant has caused multiple floods in the residential property, and they are becoming more frequent. By denying the landlord access to the rental unit, the tenant has failed to cooperate with any repair efforts of the landlord. I find it more likely than not that the tenant will cause more damage to the residential property or allow existing damage to get worse, if the landlord is required to end the tenancy pursuant to section 47 of the Act.

Accordingly, I grant the landlord the requested order of possession, effective two days after the landlord serves him a copy with this decision and attached order, effective at 1:00 pm.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he 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 amount. The landlord is cautioned to handle the balance of the security deposit (\$1,150) 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(s) by the landlord by 1:00 pm.

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 30, 2020

Residential Tenancy Branch