



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 November 22, 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, the Tenant, and the Tenant's Advocate K.P. attended the hearing at the appointed date and time. The Landlord testified the Application and documentary evidence package was served to the Tenant on November 24, 2020. Pursuant to sections 88 and 89 of the *Act*, I find that the above mention documents were sufficiently served in accordance with the *Act*.

The parties agreed that the Tenant served her documentary and digital evidence to the Landlord on December 5, 2020. The Landlord confirmed receipt, however, indicated that he was served late.

Preliminary Matters

According to the Residential Tenancy Rules of Procedure (the "Rule of Procedure") 10.4 Respondent's evidence for an expedited hearing;

Copies of all of the respondent's available evidence must be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence must be served on the other party in a single complete package.

Rule of Procedure 10.5 Time limit for respondent's evidence;

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

As the Tenant served the Landlord on December 5, 2020, I find that the evidence was served late as the date of service and the date of the hearing are not factored into the consideration for days of service. As such, I find that the Tenant's evidence will not be considered in this decision. The hearing continued based on the evidence which was served in accordance with the Act, Rule of Procedure and oral testimony from both parties.

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 to the following; the tenancy began on August 1, 2020. Currently, the Tenant pays rent in the amount of \$1,300.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00 which the Landlord continues to hold.

The Landlord stated that he is seeking to end the tenancy early in relation to three areas of concern which are putting the Landlord and his property at severe risk. The Landlord stated that shortly after the Tenant moved into the rental unit, the sump pump in the rental unit clogged on two separate occasions, resulting in the pump failing and leaking sewage in the basement. The Landlord stated that he had the sump pump replaced as it was found that something had been passed through the sewage line, which burned out the sump pump.

The Landlord stated that he discussed with the Tenant which items were not acceptable to flush down the toilet. The Landlord stated that there were two further occasions, on October 7 and again on November 7, 2020 in which the pump was once again clogged. The Landlord stated that he found some wipes and cigarette butts in the pump which caused the clogs. The Landlord stated that the Tenant is not being mindful towards

what she is flushing, which is causing damage to the sump pump and the basement due to the pump leaking.

The Landlord also expressed concerns regarding the Tenant smoking in the rental unit. The Landlord stated that the parties agreed in the tenancy agreement that there is no smoking permitted on the rental property. The Landlord stated that he has detected the odour of marijuana emitting from the rental unit, which causes secondhand smoke concerns for his family living above the rental unit. Lastly, the Landlord indicated that the Tenant as rude and swore at him during their discussion on November 7, 2020.

The Landlord stated that he has served the Tenant with a One Month Notice to End Tenancy with an effective date of December 31, 2020, however, the Landlord stated that it would be unfair to wait until the effective date of the Notice for the tenancy to end.

The Tenant responded by stating that the parties had agreed that the clogs to the sump pump prior to its replacement may have to do with the previous tenant. The Tenant agreed that the Landlord replaced the sump pump and that there were two occasions in which the Tenant ran out of toilette paper and used sanitary wipes instead, which contributed to the sump pump clogging again. The Tenant stated that she has since removed the wipes from her rental unit and has offered to pay for the cost of replacing the sump pump. The Tenant stated that the Landlord has declined her offer for monetary compensation.

The Tenant denied smoking on the rental property, and states that she smokes cannabis for medicinal purposes off the rental property. Lastly, the Tenant admitted to being grumpy with the Landlord during their discussion on November 7, 2020 after the Landlord woke her up to discuss the sump pump issues.

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 that 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 the Tenant clogging a sump pump by flushing wipes down the toilet, smoking on the rental property, and for the Tenant swearing and being rude during one interaction with the Landlord.

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: December 07, 2020

Residential Tenancy Branch