



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, pursuant to section 72.

The landlord was represented by their counsel, NB, in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. I note that although the tenant's counsel, MG, did call into the teleconference, he was unable to attend due to scheduling conflicts. The tenant confirmed that he was prepared and okay to proceed with the hearing without his counsel.

The tenant, TO, confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants were duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2017, with monthly rent currently set at \$1,919.00, payable on the first of the month. No security deposit was collected for this tenancy.

It is undisputed by both parties that an incident took place on June 25, 2020 which involved a sewage backup into the basement portion of the home where the tenant TO resides with his mother BO. The tenant took care and attention to clean up the water, and the landlord dispatched a plumber the next day. The cause of the sewage backup was found to be caused by leaves and debris, and the landlord filed an insurance claim.

The tenant testified that there was less than an inch of water, and he had mitigated the losses and damage by cleaning up the water. The tenants have been residing in the home since the incident, and feel that there has been no long-term damage or contamination to the home, and do not think it is necessary for them to vacate the home. The landlord testified that they had made efforts to assist the tenants in finding new housing as of July, but the tenants have refused. The landlord testified that they were concerned about contamination and damage by the sewer water that is not visible. The landlord submitted in evidence an email sent by the insurance company on November 2, 2020 warning them that the landlord had "a duty to mitigate the damages as soon as possible and if there are now further damages due to delays by the tenant, these further damages may be exclude from the claim". The landlord testified that they had allowed the delay by the tenants as they were sympathetic and wanted to assist the tenants in finding new housing, but after receiving this email, they became extremely concerned about losing the insurance coverage due to their failure to mitigate the losses. The landlord filed this application on November 10, 2020, shortly after that email was received. The landlord included a copy of the findings by the restoration company in their evidentiary materials which state "to complete the following work, we will require vacancy to the basement of the home including all contents to be removed from the premises for a duration of approx. 2-3 months to complete the restoration process". The landlord testified that the company was dispatched by the insurance company, and not themselves, and therefore the assessment was impartial and unbiased.

The landlord confirmed that they have not issued any 1 or 4 Month Notices to End Tenancy, but confirm that the tenants were served with a 10 Day Notice for Unpaid rent on October 27, 2020, with an effective date of November 6, 2020. The landlord disputes the tenants' allegations that the landlords were attempting to end this tenancy due to the unpaid rent, or in order to avoid the *Act*.

Analysis

The landlord, in their application, requested an Order of Possession on the grounds that the tenants' refusal to vacate the home have put the landlord's property at significant risk, and may result in extraordinary damage to the home which could result in declined coverage by the landlord's insurance provider.

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession 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* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that the tenants have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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 reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. The landlord provided written evidence to support that restoration work was required after a sewage backup took place on June 25, 2020, and that the landlord's insurance company may decline coverage due to the landlord's failure to mitigate potential losses.

Although the landlord testified to the issuance of a 10 Day Notice for Unpaid Rent, the landlord confirmed that no other Notices to End Tenancy have been served on the tenants.

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered. In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although the landlord has issued a 10 Day Notice for Unpaid Rent, the landlord has not issued a 1 Month Notice to End Tenancy for Cause. Although the landlord testified that they have offered to assist the tenants in finding new housing, as well as the equivalent of half a month's rent for moving expenses, the landlord has not issued a Notice to End Tenancy under section 49(6)(b), which allows a landlord to end a tenancy to renovate or repair a rental unit in a manner that requires the rental unit to be vacant. Although the landlord did provide undisputed evidence to support that the tenants refused to vacate the property after the tenants were informed that restoration or repairs were required that would necessitate the rental unit be vacant, I find that the landlord has not served the tenants with any Notices to End Tenancy other than the 10 Day Notice for Unpaid Rent. I find that over 5 months has passed since the sewage backup, and the landlord has failed to serve the tenants with a Notice to End Tenancy under section 47 or 49 despite their concerns that the tenant's failure to vacate the property could result in further damage to their property, or the likelihood that this damage may not be covered by the landlord's insurance.

I find that the landlord's failure to pursue an Order of Possession pursuant to a 1 Month Notice or a 4 Month Notice does not automatically qualify them to apply under section 56 of the *Act*. I find that the landlord failed to provide sufficient and compelling evidence to support why the standard process of obtaining an Order of Possession following the issuance a 1 or 4 Month Notice to be unreasonable or unfair. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful, the landlord must bear the cost of this filing fee.

Conclusion

I dismiss the landlord's application in its entirety. This tenancy continues 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 14, 2020

Residential Tenancy Branch