



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

On November 26, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an early end of tenancy and an order of possession for the rental unit.

The matter was set for a conference call hearing. The Landlord attended the hearing; however, the Tenant did not. The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding in person at the rental unit on December 7, 2020.

Based on the Landlord’s affirmed testimony, I find that the Tenant was served with notice of the hearing and did not attend.

The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Background

The Landlord submitted that the tenancy began on May 6, 2020 and is on a month to month basis. Rent in the amount of \$850.00 is due to be paid to the Landlord by the first day of each month.

The Landlord testified that a One Month Notice to End Tenancy for Cause (“the One Month Notice”) was issued to the Tenant on November 7, 2020.

The Landlord provided a copy of the One Month Notice. The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

Tenant has allowed an unreasonable number of occupants in the unit

Tenant or a person permitted on the property by the Tenant has:

- *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*
- *Put the Landlord's property at significant risk*

Tenant has engaged in illegal activity that has, or is likely to:

- *Damage the Landlord's property*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

On November 13, 2020, the Tenant disputed the One Month Notice within the required time frame. A conference call hearing is scheduled for February 4, 2021, to determine whether or not the Landlord has sufficient cause/ reason to end the tenancy. The Landlord testified that the Tenant has served the Landlord with the notice of hearing.

On November 26, 2020, the Landlord applied for dispute resolution seeking an early end to the tenancy and an order of possession for the rental unit.

The Landlord provided testimony that the Tenant has failed to pay the rent owing under the tenancy agreement. The Landlord testified that the Tenants boyfriend moved out and the Tenant cannot afford to pay all the rent owing under the tenancy agreement.

The Landlord testified that there was a broken water pipe in The Tenant's rental unit that was leaking and caused a flood affecting their downstairs store / business. The Landlord testified that they sent a handyperson to the rental unit and a small hole was found in the drainpipe located under the sink.

The Landlord testified that the Tenant is responsible for flooding that occurred on four occasions; twice in October 2020, and twice in November 2020. The Landlord testified that she believes the flooding was intentional because it happened four times. The Landlord testified that the last flood occurred on November 30, 2020 after the One Month Notice was issued.

The Landlord was asked if she spoke to the Tenant after noticing the floods and she replied that the Tenant said she was sorry for not closing the water.

When the Landlord was asked whether she repaired the drainpipe she replied that she did not but has completely removed the sink from the rental unit. When asked whether the Tenant would be able to cause a leak/ flood, the Landlord replied that the Tenant cannot flood the unit now.

When asked why the tenancy should end early, prior to the hearing scheduled for February 4, 2021, the Landlord testified that they cannot afford for her to flood the unit again, and that she is not paying the rent.

When I pointed out that she testified that the rental unit could no longer be flooded, the Landlord agreed and then added that the Tenant has removed a smoke detector/ fire alarm from the unit.

Analysis

Section 56 of the *Act* states that a Landlord may make an application for dispute resolution to request an order to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 and granting the Landlord an order of possession in respect of the rental unit. If an order is made under this section, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

Under section 56 of the *Act*, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, the Tenant or a person permitted on the residential property by the Tenant has 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 interest 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,
- 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

- 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 or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.** [my emphasis]

Based on the testimony and documentary evidence before me I make the following findings:

An application for an early end of tenancy is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Based on the testimony of the Landlord it appears that water running into the sink and into the sink drainpipe leaked out causing a flood. I find that the appropriate action from the Landlord would have been to fix the pipe after the first flood/ leak. I am not satisfied that the Tenant intentionally caused the flooding/ leaking.

On the issue of unpaid rent, failure to pay the rent owing under a tenancy agreement is not a ground for an early end of tenancy under section 56 of the Act.

I find that the Landlord issued a One Month Notice to the Tenant on November 7, 2020. The Tenant disputed the One Month Notice on November 13, 2020, which is thirteen days prior to the Landlord's application for an early end of tenancy.

I find that since the sink has been removed there is no risk or minimal risk that the Tenant could cause a future flood/ leak. I find that it would not be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for the dispute of the One Month Notice issued under section 47 of the Act that is scheduled for February 4, 2021.

The Landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed.

Conclusion

The Landlord issued a One Month Notice to the Tenant 19 days prior to applying for an early end of tenancy.

I find that it would not be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for the dispute of the Notice issued under section 47 of the Act that is scheduled for February 4, 2021.

The Landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed.

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 18, 2020

Residential Tenancy Branch