



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OFL, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act* (the "Act") requesting an order of possession pursuant to section 56.1 of the *Act* and to recover the cost of filing the application from the Tenants. The matter was set for a conference call.

The Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession pursuant section 56.1 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement recorded that the tenancy began on December 14, 2020, for an initial fixed-term of four months and rolled into a month-to-month at the end of the initial fixed-term. Rent in the amount of \$1,050.00 is to be paid by the first day of each month, and the Landlord is holding a \$525.00 security deposit and a \$525.00 pet damage for this tenancy. Both the Landlord and the Tenants submitted a copy of the tenancy agreement into documentary evidence.

The Landlords testified that on January 23, 2021, there was an extensive sewer back up in the rental unit and that the rental now required major renovations and repairs. The Landlord testified that due to the sewer backup, there was sewer water damage to the floor and, most likely, mould growing. The Landlord testified that the floors, cabinets, and toilet need to be removed in order to affect the required repairs. The Landlord submitted six black and white photos into documentary evidence.

The Landlord argued that due to the presence of sewer water and mould, the rental unit was not longer inhabitable and that the tenancy was frustrated.

The Tenant testified that there had been a flood in the rental unit but that the place was still livable. The Tenant confirmed that they understood that the Landlord would be entering the rental unit to conduct repairs, with written notice. The Tenants submitted six colour photos into documentary evidence.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56.1 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an Order of Possession due to a frustrated tenancy, stating the following:

Order of possession: tenancy frustrated

56.1 (1) A landlord may make an application for dispute resolution requesting an order

(a) ending a tenancy because

(i) the rental unit is uninhabitable, or

*(ii) the tenancy agreement is otherwise frustrated, and
(b) granting the landlord an order of possession of the rental unit.*

(2) If the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order

(a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and

(b) specifying the effective date of the order of possession.

In order for a landlord to be granted an Order of Possession under section 56.1, a landlord has the burden of proving that the rental unit is, in fact, uninhabitable.

During this hearing, I heard conflicting verbal testimony from the parties as to whether or not the rental unit was uninhabitable. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Landlord.

I have reviewed the documentary evidence submitted by the Landlord, specifically the six pictures, and I find these pictures show some evidence of a flood in the rental unit, but I find them insufficient to prove that the rental unit is uninhabitable.

Therefore, I dismiss the Landlord's application for an order of possession pursuant to section 56.1 of the *Act*, as I find that the Landlord has not proven that the rental unit is uninhabitable.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this hearing.

Conclusion

I dismiss the Landlord's application for an order of possession pursuant to section 56.1 of the *Act* and to recover their application fee. 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: February 16, 2021

Residential Tenancy Branch