



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFT

Introduction

On March 5, 2021, the Landlords made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms.

Landlord J.L. attended the hearing and the Tenant attended the hearing as well. All parties in attendance provided a solemn affirmation.

The Landlord advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on March 15, 2021. The Tenant confirmed receipt of this package despite it being served late and not in accordance with the *Act*. As the Tenant was prepared to proceed, I am satisfied that the Tenant was served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant advised that her evidence was served to the Landlords by placing it in their mailbox on March 29, 2021. The Landlord confirmed that they received this package.

He also did not have any opposition regarding how or when this package was served, and he advised that he was prepared to respond to this evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an early end to this tenancy and an Order of Possession?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The parties could not agree when the tenancy started, but it was approximately 15 years ago. The Landlord stated that rent was currently established at \$950.00 per month, and that it was due on the first day of each month. However, the Tenant advised that rent was actually \$834.00 per month. The parties did agree that a security deposit of \$400.00 and a pet damage deposit of \$400.00 were also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

The Landlord advised that three years ago, the Tenant had a maggot infestation on her balcony that originated from her cat litter box. As a result, the maggots infested the downstairs tenant's home. He also advised that the Tenant had a hoarding episode, that she had dogs that would soil the carpets of the rental unit, and that at one point, the fire department had to physically rescue her to remove her from the unsanitary condition of the rental unit.

He attempted to work with the Tenant to correct this problem and the Tenant signed a document dated August 12, 2019, agreeing to deal with this issue and agreeing to

remove the pets. However, the downstairs tenant complained again of having flies and maggots, so the Landlord conducted an inspection of the rental unit in May 2020. The Landlord discovered that the Tenant had dirty dishes piled up, rotting food in the oven containing maggots, and spoiled food in the fridge. He referenced the documentary evidence submitted to support this position. He then came to an agreement with the Tenant that she would pay for a deep cleaning of the rental unit and that she would also pay for bi-weekly cleaning of the rental unit.

He submitted that the downstairs tenant still gets maggots and flies in his unit, and that this person has filed a lawsuit against the Landlord because of this ongoing issue. He advised that he requested receipts for the bi-weekly cleaning from the Tenant to prove that she is adhering to this agreed upon plan, but the Tenant has not provided them to the Landlord. He attempted to acquire proof from the cleaner that this schedule is being maintained; however, the cleaner would not provide this information of her customer to another party.

The Tenant advised that she did not have any issues until 2015. She indicated that she suffered from a bout of depression, that she began hoarding items, and that she was hospitalized. She confirmed that the maggot issue developed from her cat litter, that her pets were removed from the rental unit, and that she cleaned the rental unit. She confirmed that there was an episode in May 2020 where the downstairs tenant complained again of maggots, and when the Landlord conducted an inspection, dirty dishes, a messy fridge, and maggots were discovered. She agreed that she would pay for a deep cleaning of the rental unit and she would also pay for bi-weekly cleaning of the rental unit.

She stated that a cleaner visits the rental unit every two weeks to clean, and has done so since May 2020. However, there was a flood of a different unit in the building in July 2020, which rendered her rental unit unoccupied for a few months. The rental unit was cleaned completely after the restoration was completed. Apart from this period of time, the cleaner has visited every two weeks to clean the rental unit and she submitted documentary evidence to support this position. As well, she included pictures of the condition of the rental unit to demonstrate that the rental unit is regularly kept clean.

She advised that she has not had any flies or maggots in her rental unit since May 2020. She stated that the downstairs tenant came to her rental unit because he had black flies in his unit, and she submitted pictures of flies in the elevator of the building. After this complaint, she stated that the Landlord never inspected her rental unit to determine if she had any reoccurring issues. She submitted that she received an email

from the Landlord on November 15, 2020, advising her that the downstairs tenant complained of maggots again. She stated that a pest control company inspected her rental unit, that there was no source of flies detected, and that her rental unit was not sprayed. She suggested that the downstairs tenant's fly issue could be due to "cluster flies" that are originating from a garbage can that he keeps on his balcony, or from a nearby garbage can in a park area.

The Landlord could not confirm if a pest control company visited the rental unit at any point after May 2020. Regarding the Tenant's suggestion of cluster flies, he stated that maggots turn into flies. It is the Landlord's position that the rental unit is not kept clean, that the Tenant is not adhering to the cleaning schedule, and that there is a serious, hazardous health issue in the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that 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 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.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Tenant was responsible for two incidents where the development of maggots and flies were caused by the Tenant's negligence. This, according to the Landlord, has inadvertently caused a loss to the downstairs tenant as this infestation has moved to the unit below. I note that there was an agreement struck between the Landlord and Tenant in May 2020 that the Tenant would pay for a deep cleaning of the rental unit and regular bi-weekly cleaning. Despite this, the Landlord advised that the downstairs tenant reported additional instances of flies returning to his unit.

However, I do not find that there is sufficient evidence from the Landlord to demonstrate that after these reported incidents by the downstairs tenant in late 2020, that he investigated the rental unit to determine if the Tenant was responsible for the issues that were occurring in the unit below. Furthermore, I do not find that there is sufficient evidence of a pest control company that confirms that the original maggot and fly infestations caused by the Tenant in the past had not been adequately corrected or that the Tenant was still negligent and responsible for what is occurring in the unit below.

Based on the totality of the evidence before me, it is clear to me that the Tenant's past actions and negligence had caused significant issues in the rental unit, and to the downstairs unit. Certainly, there is circumstantial evidence, and a direct correlation could possibly be drawn between the Tenant's past behaviours and actions and what may be happening in the downstairs unit currently. I do not find that this is beyond the realm of possibilities. However, while the Tenant's own evidence demonstrates that her cleaning service has not attended bi-weekly as agreed upon, I am not satisfied that the Landlord has investigated the rental unit recently, or provided compelling or persuasive evidence that there has been recent negligence on the Tenant's part that satisfies the elevated threshold to warrant ending this tenancy early based on this type of Application. Consequently, I find that the Landlords are not entitled to an Order of Possession, and I dismiss this Application in its entirety.

I do find it important to note though that the Tenant's past actions and negligent, detrimental behaviours may support the formation of, and the justification for, ending the tenancy with a One Month Notice to End Tenancy for Cause.

As the Landlords were not successful in this claim, I find that they are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Landlords' Application without leave to reapply.

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: March 31, 2021

Residential Tenancy Branch