



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On April 25, 2021, the Landlord 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*.

The Landlord attended the hearing; however, the Tenant did not attend the hearing at any point during the 67-minute teleconference. At the outset of the hearing, I advised the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term. As well, she provided a solemn affirmation.

She advised that the Tenant was served with the Notice of Hearing and evidence package by posting it to the door on May 8, 2021. She submitted a signed proof of service form to confirm service. Based on this undisputed evidence, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package three days after it was posted. 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

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord 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 Landlord advised that the tenancy started on October 1, 2020, that rent was established at \$1,525.00 per month, and that it was due on the first day of each month. A security deposit of \$762.50 and a pet damage deposit of \$500.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that the Tenant informed her on April 18, 2021 that there was a flood in the rental unit from the washing machine. The Landlord investigated the next day and observed two soaking wet duvets outside of the washing machine while the washing machine was still fully loaded. She questioned the Tenant if the duvets were also in the washing machine at the time of the flood and the Tenant confirmed that they were, but then she denied this. The Landlord also notice considerable, substantial damage around the rental unit due to the flood. As well, the Landlord observed that the Tenant's cat litter had overflowed with water from the flood and the litter and feces had spread around the rental unit, causing it to smell terrible.

The Landlord subsequently advised the Tenant that a restoration company would need to come in to repair the damage. She contacted the Tenant on April 20, 2021 and the Tenant allowed a restoration company to attend the rental unit that day. This company installed dehumidifiers in the rental unit and informed the Landlord that, as they were not permitted to touch the Tenant's property, the Tenant would have to move it so that they could adequately complete the remediation. When the Landlord informed the Tenant of this, the Tenant refused to comply. As well, the Landlord called the tenant and texted her, requesting access to the rental unit so that the restoration company could continue remediating the damage; however, the Tenant refused these requests. The Landlord was unable to access the rental unit from April 20 to May 6, 2021.

While she did not submit any documentary evidence to support this, she advised that a repair person investigated the washing machine issue recently and determined that the Tenant was at fault for the flood as she had overloaded the machine with clothing beyond its capacity. She also advised that the Tenant has informed her that she has now abandoned 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.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that there was a flood in the rental unit. While there is no definitive proof of this, it appears as if it is more likely than not that this flood was caused by the Tenant's negligence.

The Landlord's position is that the Tenant denied the Landlord from accessing the rental so that the restoration company could commence remediation of the damage. However, I find it important to note that the Landlord did not comply with Section 29 of the *Act* by giving the Tenant the proper written notice for entering the rental unit. Had the Landlord done so, she could have simply entered the rental unit on the appropriate day and time to have the remediation commence, despite the Tenant's refusal. Alternately, had the Landlord believed that this was an emergency and that entry was necessary to protect life or property, she could have simply entered the rental unit regardless of the Tenant's objections.

When reviewing the evidence before me, I do not find that there is sufficient evidence from the Landlord to demonstrate that the Tenant prevented the Landlord from entering the rental unit after the Landlord complied with the *Act* to notify the Tenant of entry. Consequently, I find that the Landlord is not entitled to an Order of Possession, and I dismiss this Application in its entirety.

Regardless, the Landlord advised that the Tenant has informed her that she has abandoned the rental unit. The Landlord was instructed that she could contact an Information Officer of the Residential Tenancy Branch, or an advocate, to find out more information about abandonment of a rental unit and her rights accordingly.

As well, the Landlord was advised that she could file an Application against the Tenant for recovery of damages or loss provided she can serve the Tenant after she makes her Application.

As the Landlord was not successful in this claim, I find that she is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Landlord's 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: May 21, 2021

Residential Tenancy Branch