



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 termination of tenancy and Order of Possession, pursuant to section 56; and
- recovery of the filing fee from the tenant, pursuant to section 72.

The tenant, the tenant's advocate and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The agent is the landlord's daughter.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the agent personally served the tenant with this application for dispute resolution on July 21, 2021. I find that this application for dispute resolution was served on the tenant in accordance with section 89 of the *Act*.

Preliminary Issue- Evidence

Section 88 of the *Act* states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

Both parties agree that the landlord served the first evidence package in person with the application for dispute resolution on July 21, 2021. I find that this application was served in accordance with Rule 10.2 of the Rules and section 88 of the *Act*.

Both parties agree that the landlord served the tenant with a second evidence package on July 25, 2021. I find that the second evidence package was not served in accordance with Rule 10.2 of the Rules and is therefore excluded from consideration.

For clarity, all documents uploaded to the residential tenancy branch after July 2, 2021, when the landlord's application for dispute resolution was filed, are excluded from consideration.

Both parties agree that the tenant personally served the landlord with the tenant's evidence package on July 24, 2021.

Rule 10.5 of the Rules states:

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

I find that the tenant's evidence was served on the landlord in accordance with Rule 10.5 of the Rules and section 88 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover of the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2003 and is currently ongoing. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the landlord's wife, her mother, is unwell and needs the subject rental property for her own use because it does not have stairs and is easier to enter and exit. Both parties agree that in a previous arbitration a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") was struck down. The file number for the previous arbitration is on the cover page of this decision.

The agent testified that the landlord was unsuccessful in that application because the landlord did not provide enough evidence to prove the reason to end the tenancy as stated on the Two Month Notice. The agent testified that a second Two Month Notice was then served on the tenant and that the landlord obtained evidence to support the second Two Month Notice. The agent testified that the hearing is scheduled for September 2, 2021 but that her mother needs the subject rental property sooner than that, so the landlord filed this expedited application to have the tenant vacate the subject rental property sooner. The file number for the future hearing is located on the cover page of this decision.

The agent testified that this tenancy should end on an emergent and expedited basis because the tenant is a hoarder and that the excessive amount of materials in the subject rental property poses a fire risk. The agent testified that the amount of combustible materials in the subject rental property puts the house and her parents, who live upstairs, at risk.

The agent entered into evidence photographs of the subject rental property which show that:

- the kitchen is messy with dirty dishes on the counter and in the sink;
- the bathroom is messy;
- the living room is cluttered;
- the bedroom is cluttered; and
- the floors are mostly clear.

The agent testified that the photographs were taken on May 13, 2021 during an inspection. The tenant disputed that the photos were taken on May 13, 2021 but confirmed that the photographs are of the subject rental property and her belongings. The advocate submitted that the tenant is not a hoarder and does not have an abnormal amount of possessions at the subject rental property. The advocate submitted that a messy apartment and an unmade bed are not grounds for an emergency end to tenancy and that the tenant's property is not a fire hazard.

Both parties agreed that the landlord never asked the tenant to clean the subject rental property or remove items before serving the tenant with this application for dispute resolution. The tenant testified that she has removed many of the items from the subject rental property since receiving this application for dispute resolution.

The advocate submitted that the tenant has a number of boxes at the subject rental property because she is afraid that the landlord will be successful in one of the landlord's many attempts to evict her and wants to be ready to pack up and go if she is evicted. The advocate submitted that this application is unfounded, heavy handed and a form of harassment against the tenant.

Analysis

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 for a landlord's notice for cause. 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.

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

On this occasion I find that the agent has not provided me with convincing evidence for ending the tenancy earlier than a One Month Notice to End Tenancy for Cause under section 47 of the *Act*. I find that the central reason for this application for dispute resolution was that the landlord wanted a hearing date earlier than September 2, 2021 regarding the second Two Mont Notice, not because the landlord had any actual concern about a potential fire hazard. I find that the desire for an earlier hearing date does not meet the requirements set out in section 56 of the *Act*, for granting an early end to tenancy.

I find that the agent's testimony and the photographs entered into evidence do not prove that the number of belongings owned by the tenant constitutes a fire hazard. I find that the photographs show that the tenant is not a good housekeeper and is messy; however, I do not find that the state of the unit has put the landlord's property at significant risk or to seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant. I find that the agent has not proved that 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 therefore dismiss the landlord's application without leave to reapply.

Conclusion

The landlord's application is dismissed 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: July 27, 2021

Residential Tenancy Branch