



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 end to this tenancy and an order of possession pursuant to section 56;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlords served the tenants with the notice of hearing package by posting it to the rental unit door on July 16, 2021. Both parties also confirmed the landlords served the tenants with the submitted documentary evidence by posting it to the rental unit door on July 17, 2021. Both parties confirmed the tenants served the landlords with their submitted documentary evidence via Canada Post Registered Mail on July 22, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an early end to the tenancy and an order of possession?
Are the landlords entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 1, 2020 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated December 24, 2019. The monthly rent is \$1,800.00 payable on the 1st day of each month. A security deposit of \$900.00 and a pet damage deposit of \$300.00 were paid on December 24, 2019.

The landlords seek an early end to the tenancy and to obtain an order of possession. The landlords state that the tenants pose an immediate and severe risk to the rental property, other occupants or the landlord.

The landlords claim that the tenants are doing significant damage to the suite, have caused one of their tenants to vacate and are disturbing multiple other tenants. The landlords also claimed that the tenants have not been paying rent. The landlords clarified that the tenants have caused a total of 5 times the overflow of water from the bathtub (a clawfoot tub). The landlords claim that the last overflow occurred on May 18, 2021 which resulted in the landlords' applying for an early end to the tenancy. The landlords also claim that the tenants have refused access to the rental unit subsequently to allow the landlords an opportunity to inspect for any possible damage. The landlords stated that as a result of receiving the tenants' documentary evidence, the landlords referred to the tenants' evidence video #2 and #3 which shows proof of the bathtub leaking. The landlords also claim that based upon the tenants own evidence there are also a broken kitchen faucet, broken toilet and a broken ventilation window (glass). The landlords argue that the tenants fill the bathtub above the overflow drain and have applied silicone to the base of the faucet fixtures. The landlords argue that the repeated overflow of water has caused the flooring to be compromised.

The landlords also confirmed that a 1 month notice to end tenancy for cause was issued and served to the tenants. Both parties agreed that a dispute resolution hearing has been scheduled to hear the same issues in September 2021.

The tenants dispute the landlords' claims arguing that the landlords have failed to provide any basis for an expedited hearing under section 56(2) of the Act. The tenants argue that the landlords claim that the tenants have caused extraordinary damage to the residential property has not been met.

The tenants dispute that the tenants are the cause of the water overflowing. The tenants confirmed that they fill the tub up beyond the overflow drain of the bathtub, however the tenants argue that the water leaking is not caused by the tenants. The tenants referred to the tenants' evidence submitted as video #2 and #3. The tenants stated that these videos were taken on April 22, 2021 and show the source of the water leak. The tenants state that the water is leaking from the main drainpipe connection and the overflow drainpipe connections. The tenants stated that their main form of bathing is the use of the bathtub due to therapy required for both tenants. The tenants stated that they need to fill the tub high enough to allow them to float inside. The tenants referred to an email dated May 21, 2021 in which the tenants have notified the landlords that the water leak appears to be coming from the drainpipe connections to the bathtub and a request to have the landlord scheduled a repair of the pipes. The tenants argue that no action has been taken by the landlords.

The tenants provided further arguments disputing the landlords' claims that the kitchen faucet is not broken but has a hole in it; the ventilation window is not broken but has a worn down rope; and that all rent has been paid on time and that the last months rent was returned by the landlords to the tenants without explanation.

The tenants have referred to Residential Tenancy Branch Policy Guideline #51, Expedited Hearings. The tenants argue that the landlords have failed to provide evidence that the tenants are the cause of the water leak. The tenants argue that the landlords have failed to provide sufficient evidence that there is an imminent danger/risk caused by the tenants regarding the water leak. The tenants argue that the landlords were notified of the leaks from the pipe connections and has taken no action to inspect/repair them as shown by the tenants' submitted emails dated May 21 and May 22, 2021. The tenants argue that the landlords have failed to meet the requirements of an expedited hearing under section 56 of the Act and that the landlord's issues should be dealt with the scheduled dispute resolution hearing set in September 2021.

Analysis and Conclusion

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;

- put the landlord's property in 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.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

In this case, the landlords have claimed that the tenants have caused extraordinary damage to the residential property by stating that the tenants have caused numerous leaking of water from the bathtub overflowing compromising the flooring. The tenants have disputed this claim. The landlords have also argued that the tenants should not be blocking the overflow drain.

The landlords have claimed that the tenants have caused extraordinary damage to the rental unit by causing a water leak into the unit below for the 5th time. The landlords claim that the floor is compromised and the bathtub may fall through. However, the landlords confirmed that no inspection of the floor has taken place and rely on the previous inspection by their drywall technician when it was repaired. The landlords stated that the drywall technician had previously reported that the flooring was wet and that if it continued to soak up water that the wood flooring may fail.

A review of the tenants' evidence video #2 and #3 does not reveal a leak in the tub, but a slow leak from main drainpipe connection under the tub and from the drainpipe connection to the bathtub's overflow drain. The tenants have also argued that since being notified of these leak issues, the landlord has not taken any actions. I find that there is no other evidence before me to show how the water is leaking besides the videos provided by the tenants.

Both parties confirmed in their direct testimony that the landlord issued and served a 1 month notice to end tenancy for cause dated May 18, 2021 based upon the same issues, for which a dispute resolution hearing has been scheduled in September 2021.

Residential Tenancy Branch Policy Guideline #51, Expedited Hearings state in part, This policy guideline addresses Expedited Hearings...there are circumstances where the director has determined it would be unfair for the applicant to wait...for a hearing. These circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to the rental unit...The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits...

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect(at least one month).

In this case, I find based upon the evidence presented before me that the landlords have failed to provide sufficient evidence to satisfy me that it would be unreasonable or unfair for the landlords to wait for the notice to end tenancy. Both parties have confirmed that the landlord has issued a 1 month notice to end tenancy for cause scheduled for dispute in September 2021. The landlords have failed to provide sufficient evidence of an imminent danger to the rental property, other occupants or the landlords. I find the tenants evidence compelling regarding the source of the water leaks based upon the submitted two videos when compared to the landlords' direct testimony that the tenants have stated that the water leaks are compromising the bathroom floor. The landlord provided no supporting evidence of any imminent danger other than the drywall repair technician who had repaired the below unit's drywall previously. No statement or affidavit was provided by the landlord from this technician. No pictures of any water damage were provided in support of this claim. As such, the landlord's request for an early end to the tenancy does not meet the standards required under section 56 of the Act and 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: July 30, 2021