



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution filed under the Residential Tenancy Act, seeking an order ending tenancy early, and recovering the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. Both parties confirmed they were not recording the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Is the landlord entitled to an order ending tenancy early and obtaining an order of possession?

Background and Evidence

The tenancy began on November 1, 2018. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$625.00 was paid by the tenant.

The landlord's agent testified that they seek to end the tenancy because the tenant has caused damage to the property. The agent stated that the damage to the property only started when the landlord's house went up for sale and the subject of removals were being removed.

The landlord's agent testified that in May 2021 the tenant had a space heater in the laundry room which caused a fire. The agent stated they have no idea if the heater was on at the time. The agent stated they did not provide a copy of the fire report.

The landlord's agent testified that the tenant has removed the flooring from the rental unit. Filed in evidence are photographs.

The landlord's agent testified that the tenant has attempted to have the sundeck fall by causing damage to the exterior posts. The agent stated they believe the tenant painted something on the post causing the damage. Filed in evidence are photographs.

The tenant testified that they did not cause the fire in the laundry room. The tenant stated that it was an electrical fire in the ceiling. The tenant stated that they used a fire extinguisher to put out the fire; however, the fire department attended, and they pulled the ceiling down, showing that it was an electrical fire. Filed in evidence are photographs, showing that the ceiling was burnt, and electrical wiring melted.

The tenant testified that the flooring has been popping up for a long time due to multiple water leaks in the rental unit. The tenant stated that they notified the landlord in June 2020 of the water leaks and the floor; however, the landlord did not address any of the problems. The tenant stated that the tiles were cheap stick on tiles and the glue would not hold when wet. Filed in evidence is a text message dated June 20, 2020.

The tenant testified that the landlord also renovated the rental unit in June and July 2021, to make the suite legal and by having multiple trades walking on the already damaged tiles made it even worse.. The tenant stated that they were also told that the floor would be replaced.

The tenant testified that they did not cause any damage to the post holding the sundeck. The tenant stated that this is wood that has rotten for a period of time. The tenant stated that they also helped the landlord make the repair.

Analysis

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

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy

were given under Section 47 (One Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
 - iv. engaged in illegal activity that
 - a) Has caused or is likely to cause damage to the landlord's property,
 - b) 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
 - c) Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
 - v. caused extraordinary damage to the rental unit or residential property; and
- b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under Section 47 to take effect.

In this case, I do not accept the landlord's agent testimony that the fire in the laundry room started by the tenant using a space heater. The photographs provided by the tenant clearly show that this fire started in the ceiling. Further, it would have been reasonable for the landlord to provide a copy of the fire report to support their version.

I accept the evidence of the tenant that the floor tiles have been an issue for an extended period of time due to water leaking. The text message filed in evidence by the tenant is dated June 20, 2020, which the tenant notified the landlord that they really needed some floor tiles replaced. The text message further shows the landlord will make repairs when they make the basement suite legal; however, this was not done until June or July 2021, over a year after the request was made by the tenant. I find I am not satisfied that the damage was caused by the neglect of the tenant. Rather, I find it more likely than not from the landlord's lack of doing repairs when notified of the problem a year earlier.

I do not accept the evidence of the landlord's agent that the tenant caused damage to the wood exterior post holding the sundeck. The photographs show that the base of the

post was rotten, and that there were areas on the upper deck rotting. Further, it would have been reasonable for the landlord to provide, such as an engineering report to prove this damage was caused by the action of the tenant. I find it more likely than not that the damage was caused by the lack of repairs by the landlord.

Based on the above, I dismiss the landlord's application to end the tenancy early and obtain an order of possession. As the landlord was not successful, I find the landlord is not entitled to recover the cost of the filing fee.

Conclusion

The landlord's application is dismissed. The tenancy will continue until legally ended under 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: August 19, 2021

Residential Tenancy Branch