



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On August 14, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on an early end of tenancy 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’s Application was originally set down for a hearing on September 13, 2021 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decision dated September 14, 2021. A settlement agreement in principle was almost reached; however, these efforts were ultimately unsuccessful.

This Application was then set down for a final, reconvened hearing on September 20, 2021 at 11:00 AM.

The Landlord attended the final, reconvened hearing with C.L and T.L. attending the hearing as agents for the Landlord. The Tenant attended the final, reconvened hearing as well. At the outset of the final, reconvened 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. As well, all parties in attendance provided a solemn affirmation.

At the original hearing, C.L. advised that the Tenant was served the Notice of Hearing and evidence package by posting it to the Tenant’s door on August 24, 2021 and the Tenant confirmed that she received this package. Based on this undisputed evidence,

and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served the Notice of Hearing and evidence package.

However, C.L. confirmed that she did not check whether the Tenant had the ability to view the Landlord's digital evidence prior to serving it, pursuant to Rule 3.10.5 of the Rules of Procedure. The Tenant stated that she did not receive the form that describes the contents of the digital evidence, so it was difficult to organize her defence. Although, she did acknowledge that she was able to view all of the videos submitted by the Landlord.

I advised the parties that I would reserve judgement about whether or not this digital evidence would be accepted. I find it important to note that the Tenant acknowledged that she was able to view all of the videos and that she made reference to them at the final, reconvened hearing. As the hearing was adjourned, allowing her more time to review these videos, I am satisfied that the Tenant was served the evidence package. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that she served her evidence to the Landlord by placing it in the Landlord's mailbox on September 1, 2021. C.L. confirmed that she received the Tenant's evidence, albeit by email. B.L. stated that the Landlord received the Tenant's evidence on September 3, 2021 and that these documents were the same as what C.L. received by email. Based on this undisputed evidence, I am satisfied that the Landlord was served the evidence package. As such, I have accepted all of the Tenant's 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 and written 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.

All parties agreed that the tenancy started on June 1, 2021, that rent was currently established at \$700.00, and that it was due on the first day of each month. A security deposit of \$350.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

During the original hearing, the Landlord was questioned about the discrepancy in the dispute address as the Landlord noted on the Application that the rental unit was the "basement"; however, the tenancy agreement did not make this distinction. C.L. advised that this was an error made on the tenancy agreement as the Landlord rents three separate rooms, on different tenancy agreements, in the basement. As well, she stated that the hall and kitchen in the basement are common areas that are not rented out as a specific part of each of the three, separate tenancy agreements. These areas are common areas that the tenants share with each other and also with the Landlord, who uses these common areas to "conduct business".

C.L. was informed that if three separate rooms were rented on three different tenancy agreements, by not identifying each of the rooms separately and by not noting the specific rooms on each respective tenancy agreement, this could possibly create difficulty in establishing what is rented to the parties as well as creating a situation where Orders may not be enforceable. C.L. acknowledged this and confirmed that the Landlord wanted to continue this Application noting "basement" as the dispute address.

The Tenant advised that it was her intention to rent the entire basement. However, if it was her belief that she did rent the entire basement pursuant to the tenancy agreement, she was questioned why she took no action when a tenant subsequently moved into one of the other rooms in the basement, especially given that she knew this other tenant had signed a separate tenancy agreement with the Landlord. The Tenant would continually provide vague answers and deflect from the question. It was unclear why she would not directly answer this simple question other than to avoid outright acknowledging that she did not have sole use of the entire basement, as she attempted to suggest.

I find it reasonable to conclude that if the Tenant knowingly signed a tenancy agreement for the entire basement, if the Landlord then subsequently rented out portion of that same space to another tenant, that the Tenant would likely have an issue with this and would raise this concern to the Landlord as this would not be legal to do. However, there was no such complaint made by the Tenant. When asking the Tenant this basic question, it became obvious that she was continually and intentionally attempting to portray a scenario that was untruthful, and this caused me to question her credibility on the whole.

While the tenancy agreement does not indicate as much, I am satisfied that the Tenant rented a single room in the basement and that the other rooms were not part of her

tenancy. Furthermore, it is clear that the hall and kitchen areas of the basement were common areas that would be shared by the occupants of the basement and the Landlord.

With respect to why the Landlord applied for an early end of tenancy, C.L. advised that on July 27, 2021, the Landlord brought her friend into the common area of the basement to show her one of the vacant rooms for rent. C.L. stated that the Tenant called the police, that she made a false, misleading report of the Landlord's friend assaulting her, and that she stated that she would press charges. C.L. spoke with the police and informed them that her mother and friend were only in the common areas and never entered the rental unit, despite the Tenant's allegations. She stated that the police determined that there were no incidents of physical violence and that charges could not be laid.

C.L. submitted that the Tenant was informed that the Tenant only rents the specific room, that the Landlord can access the common areas of the basement without providing written notice, and that the Tenant continued to threaten to call the police if the Landlord entered the common areas of the basement. However, she does not know if the Tenant has followed through with this threat or contacted the police at any other times.

C.L. then advised that on September 13, 2021, the Tenant confronted the other tenant in the basement and called her a liar. She became aggressive and blocked this other tenant from being able to access the kitchen area. The Tenant then reportedly threw eggshells at the other tenant. The other tenant is fearful of her safety as she is followed around in the common areas by the Tenant and is accused of helping the Landlord. The other tenant is too scared to call the police about the Tenant's behaviour. The Tenant's behaviours were recorded and shown to C.L.

C.L. advised that she received complaints and videos from the other tenant due to an incident where the Tenant refused to move her belongings in the common areas and called the other tenant "disgusting". She stated that the Tenant yells at the other tenant, uses aggressive and insulting language, is constantly confrontational, and that she does not want any other people living in the basement. As well, she stated that the Tenant was upset on multiple occasions because the other tenant was using the microwave. She stated that the Tenant threatened to call the police about these incidents and that the Tenant makes up accusations.

C.L. advised that on June 29, 2021, the Landlord observed the Tenant putting a shower cap over the smoke detector and the Tenant was asked to stop doing this as it is a fire hazard. The Tenant removed the cap, but it was observed to be back on the smoke detector on July 9, July 22, and August 11, 2021. Each time the Landlord discovered that a shower cap had been placed back on the smoke detector, the Tenant would then remove it.

Finally, C.L. advised that the Landlord was in the common area on July 9, 2021 and she noticed that the Tenant had turned on the oven to high, with nothing in it, and then went back to her room. She testified that the Landlord was in the common area from 9 AM to 5 PM that day, but the Landlord was not sure how long she waited before turning the oven off because it appeared as if the Tenant was simply doing this out of spite. She submitted that the Tenant would then come out of her room and turn the oven back on. As well, the Landlord stated that the Tenant would turn on the tap, leave it running, and then go back to her room.

C.L. stated that the Landlord "believes" that the Tenant eventually put something in the oven to cook, but this was burned, and the Tenant was seen later washing this burned dish. She stated that the other tenant provided a statement confirming that, on another occasion, the Tenant was observed to have turned the oven to high and left, but it was not clear what date this occurred.

The Tenant confirmed that she called the police on July 27, 2021 but she never informed them that the Landlord had accessed her room. She stated that the Landlord and her friend were too loud, but when she went to talk to the Landlord about this, the friend stated that the Tenant was the problem and that the friend then "grabbed" the Tenant's shoulder. She stated that the police never responded to her regarding her allegations of assault, and she stated that she never followed up on this.

The Tenant then advised that the incident in the kitchen with the other tenant happened on September 15, 2021. She stated that she waited two hours for the other tenant to finish cooking, and as it was already 11 PM, she then decided to make her dinner. She submitted that the other tenant was upset and hostile, that she took pictures, and that she told the Tenant to leave. The Tenant acknowledged that she became upset, that she raised her tone, and that she informed the other tenant that she had a right to be there as well as she "rented the kitchen too". As she started cooking, she alleges that the other tenant pushed her. She stated that she did not threaten the other tenant, nor did she intentionally try to hit the other tenant with eggshells as she was simply trying to throw them in the sink. She stated that the reason she did not call the police about this physical pushing incident is because the police did not do anything about her earlier complaint of being assaulted.

Regarding the incident that happened on July 6, 2021, she apologized for stating that the other tenant had disgusting sanitary and hygienic habits. However, she did not threaten or physically assault this person.

With respect to the smoke detectors, she stated that she put the shower cap on it because she did the same thing in her previous tenancy due to smoke from forest fires. She testified that C.L. informed her that this should be removed when cooking; however, she stated that this has been removed permanently.

Regarding the July 9, 2021 incident with the oven being turned on and left unattended, she advised that this was not true as she barely cooked in July due to the heat. She stated that she had no reason to do this and had she in fact done this, she did not receive any notice or warning about it. She questioned how this would be determined an emergency, had she in fact left the oven on high unattended for so long, if the Landlord was there watching it. She also denied running the water as alleged by the Landlord.

Finally, she advised that she confronted the other tenant on two occasions for using the microwave late at night or early in the morning. She stated that she informed the other tenant of her concerns and that it was the other tenant that was confrontational.

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 this type of Application is reserved for the most severe of circumstances. The threshold for establishing an early end to the tenancy is extremely high and exceeds that which is required to justify an end of tenancy based on a One

Month Notice to End Tenancy for Cause. As well, it should be noted 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.

Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. In addition, I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, it is clear that the Landlord/Tenant relationship is strained and is tenuous at best. With respect to the incident where the police were called on July 27, 2021, while it is evident that the police could not make a determination on whether the Tenant's allegations of physical assault were confirmed or not, I do not find that the Landlord has provided sufficient evidence that the Tenant's behaviour during this interaction would satisfy the threshold for an early end of tenancy. I note that the Tenant has not appeared to have followed through with threats to call the police, and it should be noted that the police should only generally be called for criminal matters, not to settle personal disagreements. However, as it does not appear that there have been any other incidents involving the police, I am not satisfied that threats to call the police or the potentially false allegations as described by the Landlord warrant an early end of tenancy.

Regarding the alleged incident between the Tenant and the other tenant in the kitchen on or around September 15, 2021, and the other allegations of "disgusting" living behaviour or of ill-timed microwave use, as I have already determined above, it is clear that the Tenant's rental unit is a room in the basement solely, that the other bedrooms are part of separate tenancy agreements, and that the Tenant shares the common spaces with the other tenants of the basement suite and the Landlord. I note that it is incumbent on persons living in a shared suite to co-exist together peacefully, and it is not the role of the Landlord to manage personal differences between their tenants. However, when disputes devolve to the point that the parties' right to quiet enjoyment may be compromised, it is up to the Landlord to investigate the issue after being advised of the problem to determine if there is any fault of one or both of the parties.

In situations when two residents of the same complex have a dispute amongst themselves, it is rare that these disputes are borne out of the actions of only one party. While it is not beyond the realm of possibility that the other tenant may be contributing to the disagreements, when reviewing the videos and documentary evidence before me, I find the Tenant's consistent conduct to be hostile, argumentative, and belligerent. In addition to her obvious attempts, at the outset of the original hearing, to avoid directly answering whether she rented a room or the whole basement suite, I note that throughout the hearings, I found the Tenant's demeanour and portrayal of herself to be an innocent, naïve victim to be dubious. I am skeptical that if the other tenant had

physically pushed her as alleged, that the reason she did not contact the police is that her previous allegation of assault was not responded to. Rather, I find it more likely that the reliability and the truthfulness of the Tenant's submissions are lacking. As a result, I prefer the Landlord's submissions on the whole.

In my view, it is clear that the Tenant's portrayal of the events noted were either fabricated or her perception of those events were skewed. These situations above are clearly borne out of two different tenants and their personality differences when sharing a common space. However, I find it more likely than not that the Tenant's behaviours and actions are a significant contributing factor to the dysfunction in the relationship between the tenants, and also the Landlord. It is evident that the manner with which the Tenant carries herself demonstrates that she engages in an ongoing pattern of hostility and antagonism that is inappropriate when attempting to manage living in a shared space environment peacefully. This has caused, and continues to cause, friction and discord. The behaviour of the Tenant is a clear contravention of the *Act*, and the Tenant's inappropriate conduct is not excused even if she has concerns with how another tenant is acting towards her. While I am satisfied that the Tenant's behaviour is problematic, inappropriate, possibly immature, and may warrant her tenancy ending under a One Month Notice for Cause, I do not find that these types of behaviours would satisfy the elevated threshold for warranting an early end of tenancy.

With respect to the Tenant covering up the smoke detector, it is undisputed that the Tenant has done this, and it does not make any logical sense for why this was done as it creates a potential safety issue. However, this has apparently been rectified as the Tenant no longer covers it. Regardless, I am not satisfied that this, in and of itself, would be enough to justify an early end of tenancy Application.

Finally, regarding the allegations that the Tenant turned the stove on to high and left it unattended, firstly, it is not clear to me what the Landlord would be doing in the common areas for eight hours of the day, as she testified to. Regardless, while the Landlord's allegations of the Tenant's actions would be consistent with the pattern of unusual and seemingly spiteful behaviour demonstrated by the Tenant, I note that the Landlord advised that she was not even sure how long the oven was on for and that she also observed the Tenant possibly putting food in the oven to cook. It is not beyond the realm of possibilities that the Tenant was simply using the oven in an ordinary fashion and that the Landlord elected to insert her own narrative of what she perceived to be happening. This would also pertain to the allegation that the Tenant left the water running.

As the onus is on the Landlord to prove a claim, I am not satisfied that the Landlord has established that the Tenant has seriously jeopardized the health or safety or a lawful right or interests of the Landlord or put the Landlord's property at significant risk. If anything, it is more likely than not that if the Tenant had been engaging in these

behaviours, they were more likely misguided and juvenile attempts to be spiteful and wasteful.

To reiterate as above, I do not find it beyond the realm of possibilities that the Tenant may have engaged in actions and negligent, detrimental behaviours that may support the formation of, and the justification for, ending the tenancy with a One Month Notice to End Tenancy for Cause. However, with respect to this type of Application, I do not find that any of the Landlord's submissions have met the burden of proof to satisfy the elevated threshold to warrant ending this tenancy early.

This Application is reserved for the most severe of circumstances and is not intended to resolve personality conflicts or other matters that do not meet this elevated threshold. Consequently, I find that the Landlord is not entitled to an Order of Possession, and I dismiss this Application in its entirety.

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

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: September 22, 2021

Residential Tenancy Branch