



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On September 3, 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*.

This Application was set down for a hearing on October 12, 2021 at 9:30 AM.

R.D. attended the hearing as an agent for the Landlord, and the Tenant attended the hearing as well. At the outset of the 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed 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.

R.D. advised that the Notice of Hearing and evidence package was served by registered mail to the Tenant on September 17, 2021, and the Tenant confirmed receiving 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. As such, this evidence will be accepted and considered when rendering this Decision.

The Tenant advised that she did not submit any evidence for consideration on this file.

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 April 1, 2015, that rent was currently established at \$1,100.00 per month, and that it was due on the first day of each month. A security deposit of \$550.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

R.D. advised that the Landlord provided the Tenant with written notice on August 22, 2021 that his plumber would be entering the rental unit on August 24, 2021, between 12:00 – 4:00 PM, to conduct repairs. He stated that the Landlord knocked on the door on August 24, 2021, that the Tenant would only allow the plumber into the rental unit, and that the Tenant slammed the door on the Landlord, bruising his arm. He referenced pictures and a copy of the notice to enter, that were submitted as documentary evidence, to support this position. While he stated that the plumber witnessed this incident, a statement from the plumber was not provided.

He testified that he believes the Tenant called the police about this incident, that the police interviewed all parties, and that the police asked the Landlord if he would like to press charges against the Tenant. However, the Landlord declined to do so.

The Tenant confirmed that she received the Landlord's notice of entry for August 24, 2021 and she advised that she heard an aggressive knock on the door after 11:00 AM that day. Despite her being on a Zoom call, she answered the door and saw the plumber standing there, with the Landlord aggressively standing behind him. She initially stated that she told them that she was busy and that they should come back at 12:00 PM. However, she then stated that she permitted the plumber to enter, but not the Landlord.

She advised that the Landlord physically pushed her and entered the rental unit forcibly. He then walked into the kitchen and he was screaming, which was something that he would often do. She then stated that they left and only the plumber came back at 12:00 PM to repair the plumbing problem.

She stated that she went to the police station that day, but it was closed. She reported this incident to victim services the next day, and a police officer was dispatched. She testified that the officer asked her if she would like to press charges against the Landlord, but she declined to do so. She stated that the Landlord's bruises in his pictures could have occurred when the Landlord was working on the property.

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 Landlords 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.

As noted above, 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 the onus rests with the Landlord to establish his claims. In addition, I find it important to note 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.

When reviewing the totality of the evidence before me, it is clear that the Landlord/Tenant relationship is strained and is tenuous at best. I note that the parties have provided two, opposing accounts of the incident regarding the Landlord's notice of entry effective for August 24, 2021. The Tenant has provided inconsistent and contradictory testimony regarding her version of what happened on this day, and this causes me to doubt the accuracy or reliability of her portrayal of the events as described. However, the burden rests with the Landlord to submit evidence that satisfies the elevated threshold required to justify an early end of tenancy.

I find it important to note that the Landlord did not attempt to attend the hearing to provide his first-hand account of the events as alleged. Alternately, a signed statement could have been provided that detailed and corroborated R.D.'s submissions. As R.D. was not present during this alleged altercation, he could not provide direct evidence with respect to the actual series of events that took place. Moreover, a signed letter from the plumber, who was present and witnessed this alleged altercation, may have been helpful in corroborating the Landlord's allegations. While there were two pictures submitted as documentary evidence that were supposed to demonstrate the effects of the Tenant allegedly slamming the door on the Landlord, I find that there is insufficient

evidence provided to support that this bruising was as a result of the unsupported allegations of the Tenant's behaviour.

As such, 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. 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: October 13, 2021

Residential Tenancy Branch