



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET , FFL

Introduction

This hearing was scheduled in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession, for an early end to the tenancy, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on September 23, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on September 16, 2021 were sent to the Tenant with the initials "TF", via registered mail, at the rental unit. The Landlord submitted a Canada Post document that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served to the Tenant with the initials "TF" in accordance with section 89 of the *Residential Tenancy Act (Act)*, however that Tenant did not appear at the hearing. As the documents were properly served to the Tenant with the initials "TF", the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The Agent for the Landlord stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on September 16, 2021 were not sent to the Tenant with the initials "MM". As these documents were not served to the Tenant with the initials "MM", I dismiss all claims against this party.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should this tenancy end early and, if so, should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord is attempting to end the tenancy because the Tenants replaced the hot water tank without the Landlord's permission.

The Agent for the Landlord stated that:

- The Tenants reported that the hot water tank was not working on August 13, 2021;
- The water tank operates on gas;
- The Tenants were advised that the tank would be replaced in approximately one month;
- The delay in replacing the hot water tank was because the Landlords were unable to find a tradesperson who would install the hot water tank in a timelier manner;
- Sometime prior to August 19, 2021 the Tenants replaced the hot water tank with a used hot water tank;
- On August 19, 2021 it was determined that the hot water tank had not been properly installed by the Tenants;
- On August 26, 2021 a hot water tank was properly installed by a tradesperson hired by the Landlord;
- The improper installation of the hot water tank placed the neighbours and property at risk;
- The neighbouring tenants are now concerned for their safety;
- There are men living in the rental unit;
- The Tenants have made a bedroom in the basement and are using that area as a "mechanic shop";
- The Tenants have not paid their rent; and

- The Tenants have been served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and that the landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

On the basis of the undisputed evidence, I find that the Tenants seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant when they replaced a gas water heater without using a qualified gas fitter, particularly since the water heater was improperly installed and there was a subsequent gas leak.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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.

On the basis of the undisputed evidence, I find that a hot water tank was properly installed on August 26, 2021 and that it is now functioning properly. As the residential property is no longer at any immediate risk and it was not in any immediate risk when the Landlord filed this Application for Dispute Resolution on September 16, 2021, I dismiss the Landlord's application for an early end to the tenancy and an Order of Possession.

The Landlords retain the right to serve the Tenants with a One Month Notice to End Tenancy for Cause.

Even if I accepted the Landlords' submission that there are men living in the rental unit and the Tenants have made a bedroom in the basement and are using that area as a "mechanic shop", I would not find that this tenancy should end early for those reasons. Even if those issues were grounds to end the tenancy, pursuant to section 47 of the *Act*, I cannot conclude that 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.

Even if I accepted the Landlords' submission that rent has not been paid, I would not find that this tenancy should end early for that reason as section 56 of the *Act* does not permit me to end a tenancy early on the basis of unpaid rent.

As the Landlords have failed to establish the merits of this Application for Dispute Resolution, I dismiss the Landlords' application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution 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 *Act*.

Dated: October 22, 2021