



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 23 menzies holdings ltd. and [tenant name
suppressed to protect privacy]

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; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The tenant represented themselves with assistance.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an early end of this tenancy and an order of possession?
Is the landlord entitled to recover their filing fee from the tenant?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in 2006. The landlord assumed this tenancy when they purchased the rental property in May, 2021. The current monthly rent is \$530.00. A security deposit of \$250.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a multi-unit building with 9 rental units.

The landlord submits that shortly after taking ownership of the building they entered into a Mutual Agreement to End the Tenancy with the tenant on June 12, 2021. A copy of the signed agreement was submitted into evidence. The agreement provides that the landlord will pay the tenant \$500.00 upon acceptance of the agreement to vacate the rental unit by October 1, 2021.

The tenant confirms signing the agreement and receiving \$500.00 but testified that they did not understand the nature or contents of the document.

The landlord testified that they inspected the rental unit and found it to be in a state of considerable disrepair and disorganization. The landlord writes:

The tenant has caused extraordinary damage to the rental unit that is causing urgent threat to the property and its other occupants. The tenant is hoarding and the bedroom is filled with junk and garbage. All the walls are covered in filth and water damage. The odor from this unit is extremely disgusting and smells of garbage and mold which carries into other units. There are signs of active water leaks and rodent activity due to the state of the unit.

The landlord submitted four photographs with their application showing the volume of personal items housed in the rental unit. The landlord testified that their intention is to obtain vacant possession of the rental building and perform some renovations and repairs. The landlord also mentioned that the tenant has failed to pay the full rent as required under the tenancy agreement.

The tenant acknowledges that the rental unit is cluttered with personal possessions but disputes the landlord's characterization of extraordinary damage. The tenant testified that any water damage to the rental unit and building is attributable to the previous owner and the landlord's failure to perform necessary maintenance and repairs.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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 that the landlord has provided insufficient evidence to show that there is a basis for an early end of this tenancy. While I accept the submission of the landlord that the rental unit has some water damage and clutter, I find the testimony and photographs submitted to be insufficient to demonstrate that the condition of the suite can be characterized as putting the property at significant risk. The rental unit may be aesthetically displeasing to the landlord, but I find little evidence that the condition is causing or exacerbating damage to the property. Keeping personal possessions in a rental unit, even if it is a large volume of items in a haphazard manner, can not reasonably be characterized as extraordinary damage to a rental unit.

I find insufficient evidence in support of the landlord's position that there is water ingress causing damage to the rental unit and in any event I find little evidence that the damage is attributable to the tenant. I find the tenant's explanation that the previous property owner failed to perform routine repairs or maintenance during the 15-year tenancy to be a more reasonable source of damage to the rental unit. A landlord cannot be derelict in their duty to maintain residential property in a state of repair that complies with housing standards and makes it suitable for occupation and then use that very condition of the property as a basis for ending the tenancy.

The landlord briefly alluded to a rental arrear for this tenancy but provided no documentary evidence in support of this submission. I note that non-payment of rent has no bearing on an application for an early end of the tenancy.

I further note that the landlord submits that the parties have entered into a valid and binding Mutual Agreement to End Tenancy. In accordance with Residential Tenancy Rule of Procedure 2.2 a claim is limited to what is stated in the application. I find that making a finding on the validity of the agreement and issuing an order of possession is beyond the scope of the application before me. I will note parenthetically that the tenant raises some issues about the formation and enforceability of the agreement which may have merit. Given the unequal bargaining powers of the parties, the circumstance by which the agreement was signed and the limited opportunity provided to the tenant to review, consider or seek independent legal advice, there may be a basis to find that the agreement is a nullity.

Based on the totality of the submissions I find that the landlord has not met their evidentiary onus to show on a balance of probabilities that the actions or negligence of the tenant has given rise to a basis for an early end of this tenancy. Consequently, I dismiss the landlord's application in its entirety.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

This tenancy continues until ended in accordance with 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: November 4, 2021

Residential Tenancy Branch