



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 (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order ending the tenancy on a date earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act; and
- to recover the cost of the filing fee.

The landlord, the tenant and the tenant's advocate (advocate) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited. This is pursuant to the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing.

All parties affirmed they were not recording the hearing.

The parties confirmed receiving the other's evidence and the tenant confirmed receiving the landlord's application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a One Month Notice to End Tenancy?

Is the landlord entitled to an Order of Possession of the rental unit and recovery of the filing fee?

Background and Evidence

The evidence showed that the tenant began her tenancy at this rental unit on September 15, 2015, with another landlord. The landlord here purchased the residential property and assumed ownership on or about August 27, 2021.

The residential property contains three rental units, with a main unit upstairs, and two separate suites downstairs. The tenant lives in one of the lower rental units. All rental unit are currently occupied, with five tenants living in the upper unit.

In his application, the landlord submitted that the tenant did the following:

Broke the window of her bedroom in order to force entry after misplacing her keys - Allowed a guest to start an unattended kitchen fire - Claimed additional parking to store someone else's car, causing a domestic dispute between her guests, before one seized the car and crashed it on the property Her increasingly erratic behavior threatens the property and the security of other residents.

[Reproduced as written]

The landlord testified that the tenant has exhibited a pattern of alarming behaviour. This included losing her key and breaking a window to the rental unit to get in. Additionally, the landlord testified that the tenant or guest started a kitchen fire and damaged the grounds to the residential property.

The landlord submitted written statements from the other tenants living in the main rental unit upstairs. The tenants provided their accounting of events at the rental unit, including a letter in which they wrote, "The rapid escalation of these incidents has left us in fear of our personal safety and our property's security".

The other tenants wrote that on October 3, 2021, the tenant knocked on their door and asked for help breaking into her apartment. One tenant suggested that was a bad idea and less than a minute later, they heard the sound of breaking glass. This tenant went outside to discover the tenant had broken the outer windowpane of one casement and was working on the inner pane.

On October 25, 2021, the other tenants wrote that they heard a heated argument outside the tenant's suite between a man and woman, which caused two of the tenants to go out and inquired if the woman needed help. The tenants wrote they mistakenly thought the woman was the tenant, but turned out to be the tenant's daughter. The tenants wrote they observed the tenant's vehicle blocking the driveway for a white sedan. After hearing a revving engine, they observed that the white sedan had driven down the driveway, off the pavement, through the bushes and into the signpost entrance to the roadway. Some minutes later, the man knocked on the other tenants' door, demanding they call a cab and tow truck, saying "that bitch made me crash my car". The tenant wrote that they called the police non-emergency line.

In another written statement, the upper tenants stated that at approximately 15:45 on October 26, 2021, that one of the upper tenants noticed the "smell of harsh chemical smoke", which intensified quickly, and appeared to be coming through the tenant's suite. The statement said that at 15:49 the upper tenant went downstairs and knocked on the tenant's door, with no reply. The upper tenant wrote they obtained the tenant's phone number, messaged her about the apparent fire and at 16:30, the tenant called him and said there could be no fire as her daughter was home.

Shortly after, two other upper tenants arrived home and "were alarmed by the strong smell of burning chemicals that had filled the house". They knocked on the tenant's door and this time, the door was answered by the tenant's daughter, who "appeared dazed and confused". They pointed out the smoke to the tenant's daughter, who uttered an expletive and closed the door. The upper tenants wrote they called the property owner about the situation, and at 16:48, the tenant arrived home. The property owner arrived at 17:30 and observed all windows open to clear the smoke.

The landlord testified that the tenant's evidence shows she is downplaying the incidents, due to there being no major damage.

Tenant and advocate's submissions –

The advocate submitted that the three incidents described by the landlord do not meet the threshold of the requirements of the Act in ending a tenancy early. The advocate submitted that the incidents do not even meet the threshold required for being issued a One Month Notice to End Tenancy for Cause, under section 47 of the Act. The advocate submitted these matters could have been dealt with by giving the tenant warning letters.

The advocate submitted that the break-in was only a broken window, which is not extraordinary damage, but rather was a minor incident. Further, the damage from the car accident was minor, and did not rise to the level of significant damage to the residential property.

The tenant submitted that she was not informed that the police were called and was not issued warning letters.

The tenant submitted that her daughter was in the rental unit while she was at work. The tenant explained that her daughter fell asleep while cooking her food with BBQ sauce and when she was awakened, she "put it out".

The advocate submitted that the food in the pan was chicken, which created a smoke going among all the units, and that there was no destruction to the pan. The advocate termed the incident a "minor mistake".

The advocate submitted that the landlord entered the rental unit the next day and determined there was no damage.

The advocate and tenant submitted that there was no working smoke alarm.

Evidence filed by the tenant included copies of photographs showing the window, the walls around the stove, the stove, the pan with the burnt food, and the signpost. Additionally, the tenant submitted the landlord's written evidence, with her comments added.

In rebuttal, the landlord submitted that for the tenant to suggest there was no damage was a radical recharacterization of the situation. The landlord submitted that the tenant broke through the window with a hammer.

The landlord submitted that hours later, the home was still smoke-filled. Additionally, the landlord submitted that saying the damage was small is a reflection of being lucky because the damage was relatively contained.

In response to the landlord's rebuttal, the tenant submitted that the hammer was being used for repair, not breaking the window. The tenant submitted that clearly there was no kitchen fire, as her grandson was in a bedroom with the door closed.

The advocate submitted that the tenant's daughter burned food, which occurs regularly when people cook.

Analysis

Section 56 of the Act applies and states:

Application for order ending tenancy early

56(1) A landlord may make an application for dispute resolution to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
- (b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (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;
 - (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 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 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

[Emphasis added]

I find a reasonable interpretation of section 56 (a)(iii) of the Act is whether there was a significant risk posed to the landlord's property by the tenant or person permitted on the property by the tenant, not whether that risk resulted in significant or extraordinary damage.

In this case, I find that landlord's property was put at significant risk by the tenant's daughter. While I accept that people do burn their food from time to time, as argued by the advocate, I do not find that is not relevant to this case. I find the undisputed fact that the tenant's daughter falling asleep while cooking was highly neglectful. I find there was no reasonable explanation why the daughter would fall asleep while food was cooking on the stove.

From the evidence, I find it is more likely than not that it was only through the upper tenants' intervention that prevented a fire erupting or more significant damage to the rental unit from occurring. I arrived at this conclusion as the undisputed evidence is that the upper tenants initially noticed the burning smell at 15:45, then knocked on the tenant's door at 15:49. However, the daughter did not answer or open the door, at that time, while the food continued to burn. The upper tenants then sent the tenant a text

message shortly thereafter, but the tenant did not call back until 16:30, saying there could be no fire as her daughter was home. Shortly thereafter, other upper tenants went downstairs and knocked on the tenant's door again, this time with the daughter opening the door. The upper tenants described the daughter as dazed and confused, with was not refuted by the tenant.

The fact that the other tenants intervened to prevent a full, kitchen fire I find does not take away the significant risk caused by the tenant's daughter.

Based on the testimony provided during the hearing and documentary evidence, and on a balance of probabilities, I find I am satisfied that a person permitted on the property by the tenant put the landlord's property at significant risk.

I am also satisfied that it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act. Rather than accept that her daughter was neglectful by sleeping with food cooking on the stove, the tenant failed to take responsibility or show an awareness of the serious nature of this incident. The tenant's evidence and testimony defended against the landlord's position by saying that everyone burns food and that burning food while asleep was only a minor mistake.

Therefore, pursuant to section 56 of the Act, I grant the landlord an order of possession for the rental unit effective not later than **two (2) days** after service on the tenant. I find the tenancy ended the date of this hearing, November 16, 2021, pursuant to sections 56 and 62(3) of the Act.

I also grant the landlord recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

Conclusion

The landlord's application is successful.

The tenancy ended this date, November 16, 2021.

The landlord is granted an order of possession effective two (2) days after service on the tenant.

If it becomes necessary for the landlord to enforce the order of possession of the rental unit, the tenant is **cautioned** that they may be liable for **bailiff** costs.

The landlord is granted a monetary order of \$100, for recovery of their filing fee.

I authorize the landlord to deduct \$100 from the tenant's security deposit, if they choose to redeem their monetary award in that manner. If so, the monetary order is of no force or effect.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 17, 2021

Residential Tenancy Branch