



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Landlord applied on February 7, 2022 to:

- end a tenancy early, pursuant to section 56 of the Act; and
- recover the filing fee from the Tenants, pursuant to section 72 of the Act.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified he served the Notice of Dispute Resolution Proceeding (NDRP) and his evidence on the Tenants by posting it to the door on February 9, 2021. The Landlord provided timestamped photographs of the evidence taped to the door, and a witnessed proof of service form. Pursuant to section 90 of the Act, I find the Landlord's NDRP and evidence is deemed to have been received by the Tenants on February 12, 2021, three days after it was posted to the door. Based on the Landlord's testimony and evidence, I find the Tenants were served in accordance with Rule of Procedure 10.3.

The Landlord testified that he confirmed that the Tenant was able to read documents from a USB, and provided as evidence a screenshot from a conversation with the Tenant. However, the Landlord did not confirm that the Tenant was able to see and/or hear the evidence on the Landlord's digital device, as required by #RTB-43 *Digital Evidence Details*. The Landlord also served some late evidence on the Tenant, as documented in the Landlord's proof of service photographs. I am considering in my

decision only the hard copy evidence that was served on the Tenant on February 9, 2021.

The Tenant did not submit any responsive evidence.

The Tenant testified that he had been away, “got back a week ago,” and had not had time to respond to the Landlord’s documents. I advised the parties that as the Landlord had served his February 9, 2021 evidence in accordance with the [Standing Order](#), I would be considering it in my decision.

Issues to be Decided

- 1) Is the Landlord entitled to an early end of tenancy and an order of possession?
- 2) Is the Landlord entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on June 1, 2021; rent is \$3,300.00, due on the first of the month; and the Tenants paid a security deposit of \$1,650.00, which the Landlord still holds.

The Landlord testified that police responded to a violent conflict between the Tenant and people the Tenant allowed to occupy a basement unit in the rental property.

The Landlord submitted as evidence an undated letter from the property manager, which states: “[The Tenant] was not authorized to sub lease [sic] the basement without prior written consent of the landlord or the landlord's agent.”

The Landlord testified that police have been called to the unit multiple times, and that police called the property manager on January 26, 2022.

The letter from the property manager states:

I was made aware by a police officer [badge number] about the poor condition the home currently is in, including a flood situation which appears to be deliberately caused by [Tenant’s name] [file number]. One of the landlord's partners noticed a hose traveling from the rear of the back yard up over the balcony and in towards the kitchen area (video to be provided). [Tenant’s name] claimed that the sink was left on causing the flood. However, the officer

suggested that the damaged areas are spaced out which couldn't be caused by a sink overflowing.

The Landlord testified the Tenant admitted to using a hose to flood the basement unit in an effort to drive out those residing there. The Landlord testified that a hose connected to an exterior faucet was found draped over the balcony fence, inserted into a vent leading into the basement unit, with the water left running.

The Landlord submitted as evidence a transcript of a February 3, 2022 telephone call with the Tenant, a portion of which reads as follows:

[Tenant]: What else I can tell you is this, when it came to the water down in the guy's suite, they pulled out all the garage guy's stuff. He stole his shit too middle of night nobody even knew that. They pulled it out and didn't even get charged for it. But the guys missing a whole bunch of stuff. Hes stolen from both tenants that actually have legal documents to live there even though I haven't paid rent. Hes stolen from me and [name].

[Landlord]: So the hose was there to put the water down in the basement to try getting him out but it didn't work and now that's what happened so...

[Tenant]: Because I had a water leak with my daughter by accident before and it just dried up normally it just dried up it wasn't that bad.

[Landlord]: I get it you were trying to get the water in the basement to flush him out.

[Tenant]: Yeah, flush the guy out man. Just a little bit. Just to let him know your not gonna have my free cable my free heat my free internet and free rent.

[Landlord]: So there's violence on the property, there's been attempt to flush people out and destroy the house with water. ...

(reproduced as written, with changes to names)

When I read a portion of the transcript during the hearing, and asked the Tenant about it, he did not deny that the conversation took place.

The Tenant testified that the flooding was accidental, and occurred because his father, who is 75 years old and has dementia, left the water running in the kitchen.

The Tenant testified there is no exterior vent that would lead down into the basement suite and cause damage. The Tenant testified that the hose was left on at a trickle to prevent the water pipes from freezing.

The Landlord applied on February 7, 2022 to end the tenancy early.

Analysis

Section 56 of the Act establishes the grounds whereby a landlord may make an application for dispute resolution to request (1) an early end to tenancy, and (2) 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 of the Act for a landlord's notice for cause.

When seeking to end a tenancy early and obtain an order of possession under section 56, a landlord has the burden of proving that:

- there is sufficient cause to end the tenancy such as: the tenant has put the landlord's property at significant risk, or caused extraordinary damage to the residential property; **and**
- it would be unreasonable or unfair to the landlord or other occupants to wait for a One Month Notice to End Tenancy for Cause under section 47 of the Act to take effect.

Based on the caretaker's written statement that he was contacted by police about the poor condition of the property, "including a flood situation which appears to be deliberately caused" by the Tenant, and the Landlord's affirmed testimony that the Tenant admitted to intentionally flooding the basement of the property as a strategy to get rid of its occupants, I find that in accordance with section 56 of the Act, the Tenant has put the Landlord's property at significant risk, and, that it would be unreasonable or unfair to the Landlord or other occupants to wait for a One Month Notice to End Tenancy for Cause under section 47 of the Act to take effect. This finding is supported by the telephone call transcript submitted by the Landlord, and undisputed by the Tenant, in which the Tenant admits to the Landlord that he introduced water into the basement in order to "flush the guy out."

Therefore, I find the Landlord is entitled to an early end of tenancy and an order of possession.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in his application, I order the Tenants to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlord to retain \$100.00 of the Tenants' security deposit in satisfaction.

Conclusion

The Landlord's application is granted.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants.

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: February 23, 2022

Residential Tenancy Branch