



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero International Realty
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order ending the tenancy early and to recover the cost of the filing fee.

The landlord's agents (agents) attended; however, the tenant did not attend.

As the tenant did not attend the hearing, service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was considered.

The landlord filed a signed proof of service and provided affirmed testimony that they served the tenant with the application package by registered mail on March 17, 2022, one day after receiving the documents from the Residential Tenancy Branch (RTB). The landlord also filed a copy of the Canada Post receipt and documents containing the tracking number. Additionally, the agent said that they confirmed the tenant collected the registered mail on March 31, 2022.

I accept the landlord's undisputed evidence and find that the tenant was served notice of this hearing in a manner complying with section 89(2)(b) of the Act. The hearing proceeded in the tenant's absence. Both agents affirmed they were not recording the hearing.

The agents were provided the opportunity to present their affirmed testimony, to refer to their documentary evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules), however, not all details of the submissions and or

arguments are reproduced here; further, only the evidence specifically referenced and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

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 tenancy started on June 1, 2016, for a monthly rent of \$680, and a security deposit of \$340, according to the written tenancy agreement filed in evidence. The agent said they have a management agreement with the current owner, who purchased the property from the original landlord. The residential property is an apartment building.

In support of their application, the landlord submitted that the tenant has done at least one 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 interest of the landlord or another occupant; and
- put the landlord's property at significant risk.

In support of their application, the landlord wrote:

*We asked tenant in suite (*rental unit address*) about the toilet clogged issue multiple times not to put anything down the toilet other than human waste and toilet paper. The problem continued, the plumber is no longer willing to service this suite (*rental unit suite*) due to the health, cleanliness, and sanitation situation. If the building drainage system fail;toilets, sinks, bathtub will back up in all suites in the building. The backup sewerage is a health hazard that could damage the property.*

[Reproduced as written except for anonymizing identifying information]

In addition, the agent testified that the toilet in the rental unit was just a year old and that they have tried extensively to work with the tenant to correct their behaviour, to no avail.

The agents testified that the tenant is also setting off fire alarms in the building and has broken a window in the rental unit, further has caused at least \$15,000 to \$20,000 in damage so far.

The agent testified that they have had numerous complaints from other tenants in the building who have reported drug dealing in the rental unit and that the police have been called multiple times.

Filed in evidence from the landlord was a plumber's letter confirming they will not let their technicians attend the rental unit due to the health hazard and photographs on the toilet.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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; ...**
 - (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]

In order to establish grounds to end the tenancy early under section 56 of the Act, the landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlords to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the undisputed testimony and other evidence of the landlord, I find that the landlord has met that burden.

By continuing to cause the toilet to clog many times, to the point a plumber refuses to work on the plumbing, and risking a sewer back-up in the residential building due to the tenant's actions, I find the landlord has substantiated that the tenant has put the landlord's property at significant risk.

By setting off the fire alarm multiple times and causing the police to be called to the residential property, and by breaking windows in the rental unit, I find the landlord submitted sufficient evidence to substantiate that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Due to the above, I am also satisfied that it would be unreasonable and unfair to the landlord and the other occupants of the residential property to wait for a One Month Notice to End Tenancy to take effect.

I therefore grant the landlord's application to end this tenancy early.

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. I order that the tenancy ended this date, April 22, 2022.

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 and all other 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(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 22, 2022

Residential Tenancy Branch