



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened in response to an application made March 28, 2022 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An early end to the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

The Tenant confirms receipt of the Landlord’s application, notice of hearing and evidence. The Tenant provided photos of the unit for this hearing and provided them to the Landlord however the photos were uploaded to a different dispute to be heard August 5, 2022. The Landlord confirms that they have received the photos and are prepared to proceed.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy of a basement unit started on March 9, 2017. Rent of \$1,045.00 is payable on the first day of each month. At the

outset of the tenancy the Landlord collected a security deposit of \$550.00. The Landlord lives in the upper unit. On March 31, 2022 the Landlord gave the Tenant a one month notice to end tenancy for cause (the "Notice"). The Tenant has disputed this Notice and the hearing for this dispute is scheduled for August 5, 2022. The Tenant has not yet served the Landlord with the documents for that hearing other than the photos.

The Landlord confirms that the facts to support the Notice are the same facts being relied on for this current application. The Landlord confirms that the Notice includes breach of a material term again based on the facts being relied upon for this current application.

The Landlord states as follows:

The Tenant has failed to clean the unit causing fire and health hazards. The Landlord confirms that they have not provided any supporting evidence of a fire or health hazard other than the photos of the unit and the Landlord argues that the photos are self-evidence of the fire and health hazards.

The Tenant has never cleaned the unit since move-in and has only removed garbage from the unit about 10 to 15 times during the tenancy. The Tenant does not remove litter from the unit has left ferret feces and cat litter on the floors in the unit, and dead bugs accumulated in a light fixture. The odors from below are making the Landlord and children sick. The Landlord confirms that they have not provided any supporting medical evidence. The Tenant has caused a fire hazard by having used flammable bug spray on the bugs in the light fixture. The Tenant uses extension cords with two or three items plugged into the cords and always leaves items on the top of the stove.

The state of the unit caused a leak in the kitchen to go unnoticed. There is damage to the unit and there is a risk of further damage to the unit causing repair costs that the Tenant's security deposit will not cover and that the Tenant has said they will not cover. The house insurance may not apply because of the fire risk.

The photos provided by the Landlord were taken on March 26, 2022 during an inspection of the unit. The Landlord was not in the unit during the tenancy until this time but during the tenancy the Landlord saw the unit through the windows of the unit while the Landlord was outside. The Landlord has offered many times over the tenancy to help the Tenant clean the unit and to haul away items at no cost to the Tenant.

The Tenant submits through its Advocate the following:

The reason the Landlord wants to end the tenancy is because in January 2022 the Landlord asked for a \$200.00 monthly increase in rent. The Landlord then gave the Tenant an invalid notice to end tenancy for landlord's use. The Landlord then told the Tenant that the Landlord wanted to decommission the unit and that an inspector was coming to the unit. At this point the Tenant started packing their belongings. The Tenant is disabled, and packing takes longer. The Landlord's photos of March 26, 2022 show the state of the unit while the Tenant was packing with boxes around for the Tenant's access. The bugs in the lightbulb were caused by a sudden influx of numerous bugs from the ceiling into the light fixture. The Tenant used a bug spray for this one-time occasion. The Tenant cleans the ferret cage daily. The Tenant has always been tidy, and the unit has never been a mess otherwise. There is no feces on the floor. The photos show gravel that the Tenant brings in from outside. The entrance to the Tenant's unit is only mud and gravel. The photos of items on the stove are packing boxes and the outlets are not overloaded. The Landlord has never given the Tenant any notice to rectify the unit. The Tenant argues that the Landlord has not proven that there is any immediate and severe risk to anyone or anything from any fire or health risk.

The Landlord states in response that they have been in the unit a couple of times prior to March 2022 and that they could only earlier in their testimony recall the dates of March 2022. The Tenant states that they cannot recall if the Landlord ever asked to

help the Tenant. The Tenant states that they wished to move out of the unit however as there is a severe housing shortage the Tenant has been unable to find another unit.

The Parties attempted to negotiate a settlement agreement but were unable to come to terms.

Analysis

Section 56(2) of the Act provides that 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.

As the Tenant did not provide their photos to the RTB for this dispute and did not otherwise reference them at this hearing, I decline to consider their photos.

There is no evidence of illegal activity. Given the Tenant's undisputed evidence of the events leading up to March 2022 I accept the Tenant's evidence that they were in the process of packing when the Landlord's photos were taken. Most of these photos appear consistent with this evidence. While a few photos do support that some cleaning is required, none of them indicate any serious jeopardy or risk or damage. The photo of the two cords inserted into a power bar do not appear to be excessive or a fire risk and there is no supporting evidence a fire risk. The Landlord provided photos of the exterior of the unit however these photos only show minor disarray. There are no photos of any extraordinary damage to either the interior or exterior of the unit. There is no supporting evidence that anyone's health is or has been affected over the term of the tenancy. There is no supporting evidence of any obnoxious or other bad odors emanating from the Tenant's unit. As the Landlord gave inconsistent evidence of having been in the unit before March 2022, I prefer the Tenant's evidence that the unit is usually neat and tidy. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that that the tenancy must end for any of the reasons set out in the section above. As there is no supporting evidence of any immediate or severe risk to anyone or anything, I also consider that there are no facts to support that it would be unreasonable or unfair to the Landlord or other occupant to wait for a notice to end tenancy for cause to take effect. The Landlord's application is dismissed.

Conclusion

The Landlord's application is dismissed.

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: April 25, 2022

Residential Tenancy Branch