



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:08 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlord was represented by two agents ("**WF**" and "**SW**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that WF, SW, and I were the only ones who had called into the hearing.

WF testified he served that the tenant with the notice of dispute resolution package and supporting documentary evidence by posting them on the door of the rental unit on June 23, 2022. He submitted proof of service form (RTB-9) and a photo of an envelope taped to the door of the rental unit confirming this. I find that the tenant is deemed served with these documents on June 26, 2022, three days after WF posted them, in accordance with sections 88, 89, and 90 of the Act.

The tenant did not provide the landlord or the Residential Tenancy Branch with any documentary evidence in response to the landlord's application.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) recover the filing fee;

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The owner of the rental unit and the tenant entered into a written tenancy agreement starting March 15, 2018. Monthly rent is \$1,050 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$525, which the landlord continues to hold in trust for the tenant.

The landlord named on this application is the owner's property management company. A copy of the agency agreement authorizing the landlord to act on the owner's behalf was entered into evidence.

WF testified that in February 2022, the owner decided that she wanted to sell the rental unit. He testified that in order to facilitate the sale, her realtor (SW) needed to take photographs of the rental unit to post as part of the listing. He attempted to arrange for himself and SW to gain access to the rental unit to take these photographs. He testified that tenant delayed this visit three times, stating that she needed time to clean up.

On March 21, 2022, WF and SW attended the rental unit for the purpose of taking photographs for the listing. They discovered that the rental unit was overflowing with garbage, food waste, and miscellaneous items. They submitted photographs of the condition of the rental unit (taken from the entryway) into evidence. They show garbage piled up in the kitchen to the height of the countertops, garbage piled atop the stove, fly strips covered in flies hanging from the ceiling, mold on the walls, cabinet doors and mirrors, dirty food containers on the floor and dining room table, dirty laundry piled in the entryway, and miscellaneous refuse throughout the living space.

WF and SW testified that they had difficulty opening the door to the rental unit due to the amount of garbage in the entryway. They testified that when they opened the door they cleared a small part of the entryway floor. WF testified that there were "a couple dozen flies" buzzing around. SW testified that the smell was "horrific," and the entire rental unit smelled "moldy, horrible, and damp". FW testified that he does not have a good sense of smell and could not confirm this.

On March 23, 2022, WF wrote to the tenant demanding that she clean the rental unit by April 6, 2022.

WF also obtained a quote from a biological hazard remediation company for cleaning the rental unit. They estimated that it would cost between \$6,000 and \$9,000 to remediate the rental unit. The landlord submitted a copy of the email containing the quote into evidence.

WF and SW returned to the rental unit on April 13, 2022 and found the rental unit to be in a similar condition. The landlord submitted photographs confirming this.

WF then served the tenant with a one month notice to end tenancy for cause on April 22, 2022 by registered mail. The tenant did not dispute this notice. In a subsequent conversation with the tenant, WF advised her of this notice. He testified that the tenant told him that she never received it. WF speculated that the tenant may have lost the package (or the registered mail slip) in the debris in the rental unit. In any event, the tenant did not move out on the effective date of the notice (May 31, 2022).

WF testified that he visited the rental unit on June 2, 2022, to see if the tenant had vacated. She had not. He testified that he knocked on the door, and the tenant answered, standing in the doorway. He could see five or six bags of garbage in the living room of the rental unit from where he stood, but that the tenant would not let him in. He testified that the rental unit still appeared dirty and that there was a significant amount of mold on the near in the entryway. The landlord submitted a single photo showing the condition of the rental unit as it could be seen from the entryway.

The entryway and the portion of the living room visible appear cleaner than they did on the previous two visits, however, there remains a significant amount of debris. I note that the floor of the rental unit is visible in this photograph whereas it was not in previous photographs. Due to his poor sense of smell, WF was unable to comment on the odor of the rental unit. WF did not see the kitchen or bedroom, so he was unable to say what the condition of those rooms was.

The tenant has paid rent for June and July 2022 which the landlord has accepted for use and occupancy only. The landlord submitted copies of invoices showing it accepted rent for this purpose into evidence.

## **Analysis**

Section 56 of the Act sets out the criteria that must be met for a landlord's early end to tenancy application:

### **Application for order ending tenancy early**

**56(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.

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must prove it is more likely than not that the tenant's conduct meets the criteria set out at section 56(2) of the Act.

I accept the undisputed testimony of WF and SW. Based on their testimony, supported by the photographs admitted into evidence, I find that the tenant kept significant amounts of garbage, refuse, food waste, and other debris in the rental unit. I find that the condition the tenant kept the rental unit caused it to fail to meet reasonable health, cleanliness, and sanitary standards. I accept that, at the time SW visited the rental unit, the odor emanating from the rental unit was extremely unpleasant, and that there was a large number of flies in the rental unit.

I find that the amount of refuse kept in the rental unit poses a significant fire risk to the residential property, in particular due to the fact that refuse was piled the top of stove. Additionally, I find that the condition the tenant kept the rental unit caused, or is likely to cause, damage the landlord's property (specifically, the rental unit itself).

I accept that as of June 2, 2022, the rental unit may have been cleaner than it previously was. However, the portions of the rental unit visible in the photograph provided depict living area which is still considerably unclean. Furthermore, I have no evidence before me as to the condition of the kitchen, or other parts of the rental unit which are not visible from the front entrance. I accept WF's testimony that he was unable to enter the rental unit due to the tenant impeding his access. I will not speculate

as to the condition of the parts of the rental unit which are not visible in the photograph. The tenant, having been duly served with notice of this application, could have attended the hearing to provide evidence on this point.

In light of the condition of the rental unit previously, and in light of the fact that the tenant barred access to the rental unit, I find it is more likely than not that the remainder of the rental unit is in a condition similar, if not worse, the portion visible in the June 2, 2022 photograph.

As such, I find that even in this slightly ameliorated state, the debris in the rental unit continues to pose a fire hazard and is likely to cause damage to the landlord's property.

As such, I find that the landlord has satisfied the requirements set out at section 56(2)(a) of the Act.

Due to the severity of the condition of the rental unit, the fact that the landlord has previously served a one month notice to end tenancy, and that the tenant has failed to vacate the rental unit by the effective date, I find it is unreasonable to make the landlord wait to end the tenancy pursuant to a one month notice to end tenancy for cause. As such, I find that they requirements set out at section 56(2)(b) of the Act has been met.

At the hearing, WF stated that the landlord was seeking in order of possession effective July 31, 2022, given that the tenant had paid rent for the month of July (albeit for use in occupancy only), and in order to give the tenant sufficient time to remove her possessions and clean the rental unit prior to vacating.

Accordingly, I grant the landlord and order of possession effective July 31, 2022 at 1:00 PM.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain \$100 of the security deposit in satisfaction of this amount. the landlord must handle the balance of the deposit in accordance with the Act.

### **Conclusion**

The landlord is successful in this application.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by July 31, 2022 at 1:00 pm.

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: July 12, 2022

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Residential Tenancy Branch