



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 filed on August 17, 2022 for:

- an order to end a tenancy early, pursuant to section 56 of the Act; and
- the filing fee.

The hearing teleconference was attended by the landlord's representatives, KO and KL, and by the tenant and his advocate. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were affirmed and made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant confirmed he received the landlord's materials; the tenant did not submit responsive evidence.

Preliminary Matter

The tenancy agreement indicates the applicant is a business. However, the application named an individual, which KL confirmed was an error. As, when asked in the hearing, neither party objected, I have amended the landlord's name in the dispute to reflect their legal name, as found on the tenancy agreement. This amendment is in accordance with section 64(3)(c) of the Act.

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

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 parties agreed on the following particulars of the tenancy. It began on August 1, 2015; rent is \$508.00 a month, due on the first of the month; and the tenant paid a security deposit of \$200.00, which the landlord still holds.

Landlord's representative KO testified that they were seeking an order of possession as the tenant's habit of piling flammable objects on and around his cooktop and toaster oven presents a very high risk of fire, endangering him and the rest of the tenants in the complex, many of whom are vulnerable, being elderly or children.

The landlord submitted as evidence photos of the tenant's cooktop area, taken on April 14, 2022. The photos show discolouration on the top of the range hood and the wall above it, to the ceiling. The left side of the front of the range hood is pulling away from the rest of the hood and appears to be warped. KO testified the discolouration is partially cleaned up smoke damage and the warping is heat damage to the plastic trim on the hood. KO submitted that it would have taken an extreme amount of heat for the hood trim to begin to melt.

The landlord submitted as evidence a breach letter dated April 22, 2022, which states that "the clutter in the kitchen around and on the stove present [a] significant risk of fire." The letter gives the tenant until May 15, 2022 to address the issue.

The landlord submitted as evidence an August 12, 2022 email from the tenant's social worker, which states: "I feel the safety of [tenant's name] as well as the other residents has been compromised and I've been advised by Risk Management as well as the [municipality] Police (who attended with me) to share this information with you. Photos of the suite taken on Monday, August 8 are attached here. Please consider CC-ing me on any eviction or other notices that he receives ..."

The landlord submitted as evidence one of the pictures taken on August 8, 2022 by the tenant's social worker, showing the cooktop. It appears that a plastic cutting board is on the left side of the cooktop, and what appears to be food packaging is on top of the cutting board.

The landlord submitted as evidence staff notes dated August 16, 2022, which state that KO received a telephone call and email from the tenant's social worker, stating that the social worker "had serious concerns with regards to condition of tenants [sic] unit specifically cooking area." The notes reference the April 22, 2022 breach letter and state that KO and the caretaker inspected the unit as part of the annual building inspections, finding "abundant clutter around and on the cooktop," and that one of the burners was turned on, at a low setting. The notes indicate that the tenant knew the burner was on, stating that it was for his tea. The notes indicate that KO and the caretaker told the tenant "he cannot leave a burner on when there is so much clutter on and around the cook top [sic] as it present [sic] a serious fire hazard." The notes state: "There is evidence (black smoke marks on hood vent and cupboards above stove) that [the tenant] previously had a fire issue in the kitchen that wasn't reported to [the landlord]."

KO testified that during the August 16, 2022 inspection, they found Styrofoam and plastic food containers on and around the toaster oven.

The landlord submitted photos taken during the August 16, 2022 inspection; they show a substantial amount of clutter on and around the cooktop and toaster oven, including plastic wrapping or bags.

The landlord applied the following day, August 17, 2022, to urgently end the tenancy.

The tenant testified that he had got some help, and the unit was now safe. The tenant testified the plastic cutting board has now been removed from the cooktop. The tenant submitted that when the issue was brought to his attention, he had acted, and that all was safe now.

The tenant's advocate testified that the tenant hired someone to clean the unit, and that when the advocate arrived on Tuesday September 6, the unit had been cleaned up, and there was no clutter directly bordering the cooktop.

The advocate testified that the tenant used to have someone come in three times a week to assist him, but they stopped coming in August 2022 because the tenant reported to the police that the help had been stealing from him.

The advocate submitted that the tenant needs a support system in place to maintain his space in an orderly way.

The tenant testified that sometime after August 16, 2022, the landlord had visited the unit with a member of the Fire Department, who had determined the unit was safe.

KO confirmed he had attended the unit on August 26, 2022 with a member of the Fire Department, but submitted that the tenant made improvements only after he was served with the landlord's hearing documentation.

KO testified that the tenant has a pattern of creating fire hazards which put him, other residents, and the property at risk. KO testified that the tenant's social worker said that the tenant had fired the supports he received from both the health authority and an organization assisting those with brain injury. KO submitted it is his understanding that as a result, the tenant has no supports in place, and will not in future. KO submitted that despite the recent improvements, based on the tenant's past behaviour, KO doesn't believe the tenant can maintain the improvements without support.

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 a tenant or a person permitted on the residential property by the tenant has, for example:

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or
- put the landlord's property at significant risk; **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.

The landlord's representative, KO, has provided affirmed testimony and documentary evidence that on April 14, 2022, evidence of smoke and heat damage was found above the tenant's cooktop, and that he was served with a breach letter on April 22, 2022.

The landlord has submitted an August 12, 2022 email from the tenant's social worker, which indicates she feels the safety of the tenant and other residents is being compromised by the tenant's habit of piling combustible materials on and around heat sources in his kitchen. The email also states that the police and risk management professionals recommended the social worker inform the landlord of her concerns.

KO provided affirmed testimony and documentary evidence that during an April 16, 2022 inspection, the tenant's cooktop had combustible materials on and around it, and the tenant was aware that one of the burners was turned on at a low setting.

The tenant acknowledged that there has been a fire safety issue with his unit, but submitted that the issue is in the past.

The advocate submitted that the tenant needs a support system in place to maintain his space in an orderly way, but that the supports stopped coming as the tenant reported them to the police for stealing.

KO testified that he was informed by the tenant's social worker that the tenant had fired the supports he previously received. KO submitted it is his understanding that the tenant has no supports in place and will not in future.

Based on the preceding evidence, and on a balance of probabilities, I find that in accordance with section 56 of the Act, the tenant has seriously jeopardized the health or safety of another occupant, and put the landlord's property at significant risk. And, I find it would be unreasonable and unfair to the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the Act to take effect.

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 their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72, I allow the landlord to retain \$100.00 of the tenant's 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 tenant.

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: September 09, 2022

Residential Tenancy Branch