



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord September 20, 2022 (the “Application”). The Landlord applied for an order ending the tenancy early pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

C.F.W., R.R., C.W. and D.M. (the “Agents”) appeared at the hearing for the Landlord. The Tenant did not appear at the hearing. I explained the hearing process to the Agents. I told the Agents they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agents provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

C.F.W. testified that the hearing package and evidence were posted to the door of the rental unit September 23, 2022. The Landlord submitted a photo and Proof of Service signed by a witness confirming service.

Based on the undisputed testimony of C.F.W., photo and Proof of Service, I accept that the Tenant was served with the hearing package and evidence September 23, 2022, in accordance with sections 88(g) and 89(2)(d) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the package September 26, 2022. I also find based on the evidence provided that the Landlord complied with rule 10.3 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord submitted the written tenancy agreement between the parties which started May 01, 2005, and is a month-to-month tenancy.

C.W. testified as follows. On September 04, 2022, around 4:15 or 4:30 p.m., they were alerted to smoke in the hallways of the rental unit building. They attended the rental unit and found the fire alarm going off and smoke in the unit. Despite the smoke and alarm going off, the Tenant was just sitting in the unit saying everything was fine. The Tenant said they were just cooking. The Tenant made no attempts to address the smoke or the alarm. It was the Tenant's toaster that was hot and smoking. Agents for the Landlord dealt with the toaster. The wall behind the toaster was hot. The fire department attended.

C.F.W. testified that they are very concerned about this incident, the building is a wood frame building, and this incident could have been catastrophic.

C.F.W. sought an Order of Possession effective October 17, 2022.

The Landlord submitted statements from C.W., M.H. and D.M., a One Month Notice issued to the Tenant for the fire incident and a letter to the Tenant about the fire incident.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet the above two-part test. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the outline of events as described by C.W. because they are undisputed and are supported by the Landlord's documentary evidence. I accept that the Tenant allowed their toaster to get so hot that their smoke alarm went off, there was smoke in their rental unit, the area around the toaster was hot and the fire department attended. I accept that this situation seriously jeopardized the health or safety of other tenants in the building and put the Landlord's property at significant risk because I find the Tenant created a real risk of a fire in the building through their negligence in cooking and dealing with their toaster.

I accept that it would be unreasonable or unfair to require the Landlord to wait for the One Month Notice issued pursuant to section 47 of the *Act* to take effect because the situation raises a serious safety concern for other tenants in the building. Further, the Tenant did not appear at the hearing to dispute the Application or dispute that it would be unreasonable or unfair to require the Landlord to wait for the One Month Notice to take effect.

I am satisfied the Landlord has met their onus to prove the tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit effective at 1:00 p.m. on October 17, 2022.

Given the Landlord was successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act* and issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on October 17, 2022. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to reimbursement for the \$100.00 filing fee. The Landlord is issued a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: October 07, 2022

Residential Tenancy Branch