



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

One of the landlords appeared at the hearing along with the landlords' daughter who was representing the landlords. The landlord's daughter stated her parents do not speak English well and she has personal knowledge of these tenancy matters. The landlord's representative was affirmed.

There was no appearance on part of the tenants. Since the tenants did not appear, I explored service of the hearing materials upon the tenants.

The landlord's representative testified that the proceeding documents and all of the evidence and materials submitted with the Application for Dispute Resolution were served to each of the tenants by registered mail sent on December 13, 2022. The landlords provided two registered mail receipts, including tracking numbers, as proof of service. A search of the tracking numbers showed the registered mail packages were successfully delivered on December 14, 2022. I was satisfied that the tenants were duly served with notification of this proceeding in a manner that complies with section 89 of the Act and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

Have the landlords established that the tenancy should end early and be provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy started on January 1, 2020 and the tenants paid a security deposit of \$1200.00. The monthly rent is \$2400.00 payable on the first day of every month. The rental unit is described as being the upper floor of a house. The lower floor has a basement suite that is also tenanted.

The landlord's representative submitted that they are seeking to end the tenancy on an urgent basis because the tenants have caused significant damage to the rental unit and are putting the property and the basement suite tenants at significant risk.

In August 2022 and again on November 16, 2022 water flooded the upstairs bathroom so much so that the water saturated the carpeting in the adjacent bedroom and leaked through the floor and into the ceiling of the basement suite. The tenants did not report the flooding to the landlord. Rather, it was the basement suite tenants that reported the water leaking from their ceiling.

The landlord would try to get the tenant's consent to enter the rental unit to investigate the flooding and the tenant would ignore their messages. The landlord's representative and plumber were eventually able to gain entry into the rental unit on November 18, 2022. The plumber investigated the plumbing in the bathroom and determined there was no issue with the drains and concluded that the flooding was the result of overflowing water, likely from the bathtub or possibly the bathroom sink. The landlord provided photographs of the water staining on the ceiling in the basement suite and the bathroom of the rental unit.

While the landlord's representative was in the rental unit with the plumber, the landlord's representative noticed many other damages in the rental unit and took photographs that were included in evidence. The other damages included: kitchen cabinets that were burned and broken, a bathroom drawer face was torn off, blinds were broken, a large hole in the wall, a broken interior door and broken floor pieces.

The landlord's representative explained that the landlords had pursued eviction of the tenants previously, by way of a 10 Day Notice to End Tenancy for Unpaid Rent issued in August 2022 and then a landlord's application for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure; however, the landlords were unsuccessful in their application due to insufficient proof of service. The

landlords believe the tenants are retaliating against the landlords and their attempts to end the tenancy for unpaid rent by causing intentional damage to the property.

Given the repeated flooding and the other damages, the landlords have not repaired the water damage for fear the tenants will again flood the bathroom. As a result, the tenant in the basement suite is having to endure water damage and potential mould formation.

The landlord's representative acknowledged that the tenants presented payment of January 2023 rent and the landlord issued a receipt for "use and occupancy only". However, the landlords do not want to wait for an Order of Possession to take effect on January 31, 2023 given the serious potential for further damage and risk to the property and other tenants. As such, the landlord's representative stated the landlords are willing to refund to the tenants rent for any days in January 2023 after the tenants vacate and they will communicate this to the tenants.

Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 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;
 - (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.

[My emphasis underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy. A notice given under section 47 affords the tenant ten days to dispute the 1 Month Notice or at least one full move to vacate the rental unit. If a tenant files to dispute a 1 Month Notice, a hearing is scheduled, often several months later. Section 56 also requires that the tenant has given the landlord cause to end the tenancy; however, the seriousness of the alleged offence(s) or conduct permits the landlord to have the tenancy ended without the time

afforded to the tenant under section 47. Accordingly, section 56 is intended to apply in more urgent and severe circumstances and are processed as an “expedited hearing”.

Upon review and consideration of the landlord’s unopposed submissions and evidence, including photographs and text messages, I accept that the tenants have caused serious and significant damage to the property. Of greatest concern, in my view, are the burned kitchen cabinets near the stove which appear indicative of a fire; and, the repeated floods. Both of these events put the property and the other occupant’s health and safety at significant risk. A further aggravating factor is that the tenants did not report the fire and flooding events to the landlords so that they may investigate and make necessary repairs to protect the property and the occupants of the house.

Given the timing of the 10 Day Notice that was issued in August 2022 and the landlord’s subsequent pursuit of an Order of Possession for unpaid rent and the two significant floods, along with all of the other damage, I find the landlord’s position that the tenants are deliberately damaging the property out of retaliation to be within reason.

I am also of the view that to require the landlord to wait for a 1 Month Notice to take effect, which could be several months later, would be unreasonable given the significant damage to the rental unit being caused by the tenants that is putting the landlord’s property and the health and safety of the occupants at significant risk.

In light of the above, I find the landlords have satisfied me that an early end of tenancy and an Order of Possession, as provided under section 56, is warranted in this case. Therefore, I provide the landlords with an Order of Possession effective two (2) days after service.

Conclusion

I order the tenancy is ended two (2) days after the Order of Possession that accompanies this decision is served upon the tenants.

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: January 06, 2023

Residential Tenancy Branch