



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HILDON HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

The hearing dealt with the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* (the "Act"), for an early termination of the tenancy, an Order of Possession and recovery of the filing fee for their Application.

K.V. and M.H., Agents for the Landlord attended the hearing. Attending parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, to call witnesses and to make submissions. The teleconference commenced at 1:30 P.M. and the line was left open until 1:45 P.M. to enable the Tenant to call in, however no party attended for the Tenant.

The Landlord confirmed they served the Tenant with the Notice of Dispute Resolution and their evidence (the "Materials") by registered mail on February 24, 2023. The Canada Post registered mail tracking number is included on the front page of this Decision.

I find that the Landlord's Materials were served in accordance with section 89 of the Act.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

The attending parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the

parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

M.H. confirmed that the tenancy started on December 9, 2020 and that rent is \$546.00 per month due on the first day of the month. A security deposit of \$269.30 was paid by the Tenant which the Landlord still holds.

M.H. testified that they submitted the Application requesting an early end to tenancy as they had concerns about fires within the rental unit. They stated there had been two fires in the Tenant's room and that their room was crowded and full of garbage. As a result, they were concerned about the building being burned down.

K.V. confirmed the fires were their "top priority" and they were concerned as other buildings had burned down within the area.

M.H. testified that there had been two fires in the Tenant's room, one on August 22, 2022 and one on February 17, 2023.

Video footage was submitted into evidence by the Landlord. The footage which is timestamped August 22, 2022 shows of a person carrying smoking piece of paper out of the Tenant's room and stubbing it out on the top of a garbage bin.

An incident report regarding the fire on February 17, 2023 was submitted into evidence which reads as follows:

"At 7:15 the fire alarm went off. I went up to investigate and smoke was coming out of [Tenant's unit number], by the time I arrived they had detained it"

M.H. confirmed that the cause of the fire was unknown but they believe the Tenant uses drugs and alcohol and so they think it was caused by the Tenant's carelessness.

K.V. testified that the Tenant's room was cluttered. Three photographs of the Tenant's room were submitted into evidence. They show a room with bicycles, scattered clothes, and storage boxes on shelves.

Analysis

The Landlord requests an early end of the tenancy under section 56 of the Act. A landlord may end a tenancy early under this section where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property.

The grounds as set out above are echoed in section 47 of the Act which confirms how a landlord may end a tenancy for cause. The key difference between the two sections is that under section 56 a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for the effective date of a one month notice to end tenancy for cause to take effect.

Early end of tenancy is an expedited and uncommon method of ending a tenancy and as confirmed by policy guideline 51, the onus is on the landlord to provide sufficient evidence to prove that on the balance of probabilities, the tenant committed the serious breach.

The director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property to wait for a notice to end the tenancy for cause to take effect. Without sufficient evidence the application will be dismissed.

During the hearing, the Landlord's Agents referred to two incidents connected with the Tenant.

The first incident involved an alleged fire which occurred over six months before the Application was submitted. Considering this significant time period and the emphasis section 56 of the Act places on the requirement for the landlord to show it would be unreasonable to wait for the effective date of a notice to end tenancy to take effect, I do not find this incident meets the criteria for ending a tenancy early.

The second incident involving the Tenant occurred a week before the Application was submitted. I accept the Landlord's evidence and testimony that the fire alarm was triggered, that there was smoke coming out of the Tenant's room and that the matter had been contained by the time an employee of the Landlord arrived.

It was confirmed during the hearing that the cause of the fire alarm being triggered was unknown and there was no evidence of any damage to property put forward. There was a lack of evidence that would indicate such an incident may occur again or that the incident was the Tenant's fault, either through negligence, deliberate act or omission or otherwise. I find that in and of itself, a fire alarm being triggered does not meet the threshold for ending the tenancy under section 56 of the Act.

I accept that the Tenant's room was shown to be cluttered in the photographs submitted as evidence by the Landlord. However, there was no evidence put forward that any of the items were flammable or had caused or could cause a fire in the rental unit.

I find that the Landlord has failed to show the Tenant committed a breach as set out in section 56(2)(a) of the Act and that 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 of the Act to take effect.

Therefore, I find that the Landlord has failed to prove they are entitled to an Order of Possession under section 56 of the Act and therefore the Application is dismissed without leave to reapply.

As the Landlord has not been successful in their Application, I find they should bear the cost of the filing fee.

Conclusion

The Application is dismissed and the tenancy continues.

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: March 20, 2023

Residential Tenancy Branch