



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

On July 4, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on an early end of tenancy pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

E.M. attended the hearing as an agent for the Landlord, and the Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Landlord’s Notice of Hearing and evidence package was addressed and there were no concerns with service. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served the Notice of Hearing and evidence package. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenant advised that he did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on May 19, 2023, that rent was currently established at \$1,449.00 per month, and that it was due on the first day of each month. A security deposit was never paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

E.M. advised that a condition inspection was conducted of the rental unit on May 19, 2023, and it was discovered that the electrical panel had been tampered due to a grow op that the Tenant had managed in the rental unit. She testified that a certified electrician assessed the rental unit, and she referenced this electrician's letter dated May 31, 2023, which confirmed the following:

- The electrical panel was worked on by a non-certified electrician.
- There were knock outs open in the electrical panel.
- There were non-factory screws holding covers.
- There were open knock outs in the electrical panel cover, which needed fillers.
- A couple of devices were burnt and in need of attention.
- The areas should be repaired by a certified electrician.

She testified that these issues outlined by the electrician would be considered a "fire hazard"; however, there is no such confirmation of this on this electrician's letter. This

assessment was solely her opinion based on her “limited knowledge of being an electrician”. She also submitted that there was an extreme amount of moisture and mold that she observed in the rental unit on account of the grow op, but she did not submit any documentary evidence to substantiate this testimony.

The Tenant advised that he had lived there for seven years, that the Landlord was a “slumlord”, and that inspections were never conducted on the rental unit. He testified that he did not tamper with the electrical system as there was no need for him to do so. As well, he stated that the electrical system was “not good” since the start of the tenancy and that it had always been compromised.

He testified that he had been granted a licence to grow marijuana approximately three and a half years ago, and that as a certified Red Seal HVAC technician, he made the necessary changes to the rental unit to accommodate this type of operation. However, he confirmed that he never obtained any permission from the Landlord to make any changes to the rental unit. He stated that he “assumed” that he would have been permitted to make changes to the rental unit by virtue of being granted a grow op licence from the government.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant has done any of the following:

- *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 interests 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;*

- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

it would be unreasonable, or unfair to the landlord, the tenant 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.

I find it important to note that this type of Application is reserved for the most severe of circumstances. The threshold for establishing an early end to the tenancy is extremely high and exceeds that which is required to justify an end of tenancy based on a One Month Notice to End Tenancy for Cause. As well, it should be noted that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I note that the Landlord has only submitted one piece of documentary evidence to support this type of Application, and while I accept that there are some deficiencies in the electrical system, there is nothing in this letter that confirms that the current state of the system is a "fire hazard" as suggested by E.M. Furthermore, given that there is no evidence to support that she is a qualified electrician that could make this assessment based on the electrician's letter, I give her suggestion little weight. In addition, if the state of the electrical system was so dire, it is unclear to me why this Application was made more than a month after the electrician's letter dated May 31, 2023. I can reasonably infer that had the Landlord waited over a month to make this Application, surely there would be more documentary evidence to support the significance of this issue, other than the sole piece of documentary evidence that the Landlord chose to rely on.

Moreover, given that the Tenant has lived there for a significant period of time, and given that the Landlord has not submitted any documentary evidence demonstrating a history of inspections of the rental unit, I find it more likely than not that the Landlord is an absentee Landlord who has shown little historical regard in managing his property. As such, I find that there is little evidence to support a conclusion that the Tenant was responsible for conducting alterations to the electrical panel, as this could have possibly been done previously by the Landlord.

However, I do find it important to note that the Tenant acknowledged that he was granted a licence to operate a grow op, and that he confirmed he did so in the rental unit. Furthermore, given the Tenant's complete lack of common sense in electing to make alterations to the rental unit without the Landlord's permission, and given the Tenant's demeanour and attitude, I find it more likely than not that it is entirely possible that in addition to changing the structure of the rental unit, he also made adjustments to the electrical system in order to accommodate this grow op. While I find that this is a likely scenario based on a balance of probabilities, I note that there is no documentary evidence to support this conclusively.

When reviewing the totality of the evidence and testimony before me, to reiterate as above, I do not find it beyond the realm of possibilities that the Tenant may have engaged in actions and negligent, detrimental behaviours that may support the formation of, and the justification for being served a One Month Notice to End Tenancy for Cause. However, this type of Application is reserved for the most severe of circumstances, and is not intended to permit a Landlord to queue jump in order to obtain an earlier hearing date for an unsubstantiated or unsupported claim.

Ultimately, I do not find that any of the Landlord's submissions have met the burden of proof to satisfy the elevated threshold to warrant ending this tenancy early, and I find that the Landlord is not entitled to an Order of Possession. As such, I dismiss this Application in its entirety.

As a note, the Tenant is cautioned that it is possible that his actions of altering the rental unit without the Landlord's consent, amongst other issues, may warrant the tenancy ending under a One Month Notice to End Tenancy for Cause.

As the Landlord was not successful in this Application, I find that the Landlord is not entitled to recover the \$100.00 filing fee.

Conclusion

Based on the above, I dismiss the Landlord's Application without leave to reapply.

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: August 1, 2023

Residential Tenancy Branch