



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

On July 14, 2023, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession 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*.

The Landlord attended the hearing. The Tenant attended the hearing as well, with S.M. and K.S. attending as advocates for the Tenant. 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 package and the respective parties’ evidence was discussed, and there were no issues concerning service. As such, I have accepted all parties’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral 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 tenancy started on December 15, 2021, that rent was currently established at \$1,218.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Landlord provided meandering testimony about a host of issues and topics, of which some was not readily apparent how it was relevant to this Application. During this ambling testimony, the Landlord was frequently reminded of the one-hour hearing time and was asked not to repeat the same submissions so as not to waste any of the limited time. However, the Landlord would frequently repeat the same submissions. Given that two thirds of the hearing time had been utilized by the Landlord's ambling testimony, it was necessary to stop the Landlord and ask him specific questions about this situation which necessitated the early end of the tenancy Application. The Landlord was also advised that it is not my role to review all of the evidence submitted and then cobble together the documentary evidence to make a parties' case for them.

While the Landlord did not specifically state this at the start, the crux of the issue is an apparent incontinence problem that the Tenant suffers from. He testified that he was informed on April 5, 2023, that there was a foul odour or urine emanating from the rental unit. He stated that he issued a warning letter to the Tenant on April 11, 2023, and that the Tenant took steps to rectify this issue by cleaning the carpet on April 29, 2023. He then stated that he inspected the rental unit on April 24, 2023, but the smell of urine was still prevalent. It was brought to his attention that this would likely be the case if he conducted an inspection before it was cleaned.

He then attempted to locate his documents for when he conducted an inspection after April 29, 2023, and the Landlord had difficulty finding this information in his evidence. He did advise that he had conducted two or three inspections of the rental unit, and that the smell of urine was still obvious, but he could not find any details of when these inspections were performed. He later stated that the next time he conducted an inspection of the rental unit was July 10, 2023. At that point, as there were only 10 minutes left of the one-hour hearing time, he stated that he did not have any more submissions and that the Tenant could provide a response.

It should be noted that the Landlord was extremely disorganized and could not locate much documentary evidence that he wanted to refer to, despite having sufficient time to prepare for the hearing. To summarize his position, it is my interpretation from his winding testimony that the Tenant has severe mobility issues and her incontinence in April 2023 led to complaints from other tenants in the building. He referenced a letter from a realtor who confirmed the strong smell of urine in the rental unit on April 25, 2023. He stated that there were written statements from other residents of the building who complained that the smell is still prevalent, that it can be detected as far as the third floor of the building, that it is worse on warmer days, and that the Tenant has not corrected this issue. However, he could not locate any of these statements in his evidence to direct me to the specific statements that would support his testimony. He did reference a letter from one of the residents of the building who confirmed the odour of urine, and noted her own health conditions which makes her extremely susceptible to any airborne disease that would result from the presence of urine or feces in the air. As well, he directed me to a series of messages from a person that worked for the Tenant, and it is his position that this evidence supported the Landlord's testimony about the Tenant's incontinence issue, and the manner with which she lived.

S.M. advised that he is sitting in the rental unit currently, and that it does not smell of urine. He submitted that the person that the Landlord referenced, who worked for the Tenant, was simply a housekeeper and not a health care professional. As well, he testified that this person was fired due to a theft issue, that this evidence is unreliable, and that it could have been provided vindictively. He acknowledged that the Tenant suffers from a number of health issues, but her home is currently clean and there are no concerns.

The Tenant acknowledged that she does suffer from incontinence, and that she did have a "couple of accidents" in her bed and on the carpet prior to April 29, 2023. However, she had these cleaned, and she has not had any accidents since.

K.S. advised that she has been working with the Tenant for approximately a year. She testified that workers enter the rental unit daily to assist the Tenant, and that they have reported no accident or smells in the rental unit since on or around April 29, 2023. She acknowledged that she was also in the rental unit during the hearing, and that she did not smell any foul odours.

The Landlord advised that he had been in the rental unit and had noticed the carpet and floor littered with “debris”. While he could not explain how this debris was relevant to this Application, he then suggested that this debris was “maybe” used to mask any odours. He stated that his witnesses informed him that they had to open their windows for fresh air.

It should also be noted that the hearing ultimately lasted for 76-minutes, of which the Landlord was afforded a vast majority of that time. As the Landlord was unable to use this time efficiently, there was not enough time to hear from his witnesses.

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 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 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, the consistent and undisputed evidence is that the Tenant soiled parts of the rental unit in April 2023; however, the Tenant cleaned the affected areas as of April 29, 2023. While the Landlord contends that there have been ongoing, repeated instances of the Tenant soiling herself in the rental unit, which has in turn had a negative effect on the other residents of the building, I do not find that the Landlord has adequately presented his case in a manner that would support the elevated threshold to justify an early end to the tenancy based on this type of Application. Consequently, I find that the Landlord is not entitled to an Order of Possession, and I dismiss this Application in its entirety.

I do find it important to note though that I have not made any findings on whether or not the Tenant has had incontinence incidents in the rental unit since April 29, 2023, which has negatively affected other residents in the building. The parties acknowledged that there was a future hearing in respect of a dispute of a One Month Notice to End Tenancy for Cause, and I suspect this matter will be discussed then.

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

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 11, 2023

Residential Tenancy Branch