



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution made on August 1, 2023. The Landlord applied for an order of possession pursuant to section 56 of the Residential Tenancy Act (the Act), and to recover the filing fee pursuant to section 72 of the Act.

The Landlord and the Tenant attended the hearing, and each provided a solemn affirmation.

The Landlord testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by attaching a copy to the Tenant's door. The Tenant acknowledged receipt.

The Tenant testified the documentary evidence in response to the Landlord's application was served on the Landlord by attaching a copy to the Landlord's door. The Landlord acknowledged receipt.

No issues with respect to service or receipt of the above documents were raised during the hearing. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed with respect to the terms of the tenancy. The tenancy began on October 1, 2022. Rent of \$1,100.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$550.00, which the Landlord holds.

The Landlord wishes to end the tenancy. The Landlord testified the Tenant has caused damage and presents a fire risk due to his smoking. There are three units in the rental property. In support, the Landlord submitted a photograph depicting a cardboard box with burn marks and a photograph depicting small burn marks on the deck surface.

In addition, the Landlord testified that on Thursday, August 17, 2023, a neighbour saw “billowing smoke” at the rental property but could not get the Tenant’s attention.

In reply, the Tenant testified he was not starting fires on the deck. He acknowledged that cigarettes may not have been disposed of properly. The Tenant testified that he takes responsibility for some, but not all, of the burn marks on the deck but that can be covered by the security deposit.

With respect to the incident on August 17, 2023, the Tenant testified that he was present and dealt with the issue.

Analysis

Based on the documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the Act permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the Act, which states:

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...

- (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.

In this case, I find there is insufficient evidence before me to conclude the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, put the landlords property at significant risk, or caused extraordinary damage to the residential property. While I accept there was damage to the deck and to a cardboard box, I find that is not a sufficient basis upon which to end a tenancy under section 56 of the Act. I also note the Landlord did not present any corroborating evidence of the incident on August 17, 2023, such as photographs of the fire or oral testimony from the neighbour who allegedly saw the smoke.

Considering the above, I find that the Landlord's application is dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed 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 22, 2023

Residential Tenancy Branch