



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an end to a tenancy and an Order of Possession.

The hearing was conducted via teleconference and was attended by the landlord and the tenant. The tenant acknowledges receiving the document evidence of the landlord which includes the landlord's narrative of facts, and a series of photographs and a digital voice recording. The parties participated with their testimony and submissions during the hearing. The parties were also given opportunity to resolve their dispute.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession without the requirement of one(1) month's Notice to End Tenancy - pursuant to 56 of the *Act*?

Background and Evidence

The following is undisputed by the parties. On April 01, 2013 the tenant took possession of the rental unit. Within the first 24 hours of the tenancy the landlord was alerted by the tenant that the toilet was plugged and sewage had backed into the shower stall. The landlord instructed the tenant to not use any of the plumbing and to specifically stop any flow or draining from plumbing for risk of further compromise from flooding and sewage. The landlord quickly attended the rental unit to find the tenant still using the plumbing and again it was confirmed to stop its use until a plumber arrived, at risk of flooding the unit. Later in the day it was learned the tenant had not stopped using the plumbing and as a result the rental unit incurred water damage from sewage.

The landlord testified that the tenant's response to the problem seemed inappropriate considering the damage and health risks caused by the flooding. The landlord claims that even after obtaining confirmation from the tenant, the tenant's conduct appeared as cognitively incapable of understanding the risk of not following clear directions aimed at averting the problem, and now speculates that in the event of a further such problem the tenant will not respond in a trusted or safe manner and therefore the tenant is too much of a risk to the landlord's property. As a result of the above the landlord seeks to end the tenancy due to their lack of confidence in the tenant.

The tenant testified they do not dispute what occurred or the aforementioned events; but, focused that the flooding problem was not initiated by any conduct on their part, but rather a likely structural issue with the toilet flange seal. The tenant also testified they don't foresee contributing to further issues before they vacate – which they aim to do by April 30, 2013.

Analysis

On preponderance of all the evidence in this matter I find the following. I find that **Section 56** of the *Act* is two-fold, in that it allows a landlord to request an end to a tenancy and for an Order of Possession without providing a 1 Month, if the landlord has cause to end the tenancy 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 to be effective.

Based on all the evidence submitted, I find the landlord has established the tenant has

- *put the landlord's property at significant risk, and,*
- *caused extraordinary damage to the residential property.*

None the less, I do not find that there is *sufficient* evidence in this matter establishing that it would be unreasonable and unfair to the landlord and other occupants of the residential property to wait for a Notice to End tenancy issued under Section 47 to take effect. As a result, **I dismiss** the landlord's application for an early end to the tenancy. However, the landlord is at liberty to issue the tenant a 1 Month Notice to End Tenancy for Cause with an effective date at the end of the month following the month in which the Notice is given – in accordance with the Act.

Conclusion

The landlord's application **is dismissed**. The tenancy continues subject to a Notice effective to end the tenancy.

This Decision is final and binding on both parties.

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: April 18, 2013