



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The tenant agreed she had received the Application for Dispute Resolution served to her personally. I find the Application was legally served pursuant to section 89 of the Act. The tenant noted there had been a previous hearing on March 8, 2019 on the same issue and she had succeeded. She provided the file number for my reference. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 56 and 55 to end the Tenancy early; and
- b) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to end this tenancy early pursuant to section 56; have they shown on the balance of probabilities that it is unreasonable or unfair to the landlord or other occupants of the residential unit to wait for a notice to end tenancy under section 47 to take effect?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that there is a residential tenancy agreement effective January 1, 2018 on a fixed term to expire on May 31, 2020. Rent is \$1880 a month and a security deposit of \$940 was paid.

The landlord provided evidence that the tenant poses an immediate safety risk as she has rented the home to multiple tenants and one of them is occupying the boiler room. He provided a photograph of a person with a bed and belongings in the boiler room and also letters from the city requiring him to comply. The letter is dated November 22, 2018 and states violations exist without permit or approval as follows:

1. The 1st floor has been altered to include an addition (approximately 11' x 11') on the east portion of the building; and
2. One (1) additional dwelling unit has been installed in the basement.

The landlord is told how to contact the City to obtain the required permits.

The tenant said the alterations to the home before she took occupancy. She said there is no one occupying a boiler room. The landlord was out of the country and she was dealing with the city and she understood the landlord has to remove an unauthorized balcony room and remove the stove and electric plug for it from the basement so it is not a separate basement suite. She denies that her tenancy poses any immediate safety risk so the landlord's application should not come under section 56 of the Act. She said he previously tried to evict her under section 47 for too many occupants in the home but did not succeed as he did not attend the hearing. She said the City did an inspection of the home on September 6, 2018 and issued a letter on October 12, 2018. She was dealing with the issues as the landlord was out of the country and the City extended deadlines by the letter dated November 22, 2018. She was also out of the country and when she returned, the City did an inspection on January 22, 2018 and discussed the two problems. The landlord needs to take the balcony/deck down or obtain permits as there were no permits for its construction and remove the stove and electric plug for it from the basement as the home is a single family home and not permitted an unauthorized suite. She said she gave the landlord a letter outlining these problems in January, 2019.

The tenant said construction companies came in January and April 2018. She pointed out that there was no tenant residing in the boiler room. She does not pose a severe or immediate risk and it is not necessary for her to move out for the landlord to do the necessary renovations.

The landlord said the tenant had sublet to multiple tenants; there are more than 8 people there although the boiler room tenant may be gone. He said the previous owner did the unauthorized work on the home and he needs to get the tenant out so he can do renovations. He said the tenant makes it difficult for him to inspect as she says it is not convenient when he gives notices.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

I find insufficient evidence that it is necessary to end this tenancy under section 56 of the Act. I find the tenant's evidence credible that she poses no immediate safety risk to the property so the weight of the evidence is the landlord's application does not comply with section 56(2) (b) of the Act as it is not unfair or unreasonable to the landlord or other occupants of the residential property to wait for a legal Notice to End Tenancy.

As discussed, if he has good reason to end this tenancy, I find the landlord may serve a section 47 Notice for cause or section 49 Notice for renovations as applicable in the circumstances.

Conclusion:

I dismiss the landlord's application. The tenancy is continued until legally ended in accordance with the Act. I find that the landlord is not entitled to recover filing fees paid for this application due to lack of success.

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 25, 2019

Residential Tenancy Branch