

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

ET, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlords’ application to end the tenancy early; for an Order of Possession; and to recover the filing fee for the cost of this application from the Tenants.

- (1) Should the tenancy be ended and the Landlord be issued an Order of Possession?
- (2) Is the Landlord entitled to recover the cost of this application from the Tenants?

Background and Evidence

Landlord MG’s evidence

The Landlord MG testified that she personally served the Tenants with the Notice of Hearing package, at their residential address on April 14, 2009.

The Landlord testified that the Tenants were away for a week in late March. While they were absent, a hot water pipe in their rental unit sprung a leak, causing extensive damage to the floors and walls of the rental unit. The Landlord testified that she called a plumber to remove a small area of the drywall around the pipe and do emergency

repairs to the pipe. The Landlord testified that she had an inspector come in to inspect the suite to assess the damage and what further repairs might be required.

A copy of the reporting letter from the inspector, dated April 8, 2009, was entered into evidence. The inspector found the drywall to be saturated on both sides of the wall surrounding the area of the leak. The inspector recommended immediate removal of the drywall to facilitate drying of the wood framing. The kitchen cabinets, counter top and sink would have to be removed in order to facilitate this. Furthermore, because the wall is shared between the kitchen and the bathroom, the bathroom vanity cabinet, toilet, countertop and sink would have to be removed, along with one tiled wall, the shower head and taps. The rental unit would not have any water supply for at least two months while the repairs were taking place. The inspector further advised, if steps were not taken to properly dry out the area immediately, the potential for health issues may escalate. The inspector advised that clean water becomes contaminated in days, turning from clean to grey and then black water.

The Landlord testified that, at a prior dispute resolution hearing, the Landlords and Tenants came to a settlement regarding a mutual end to the tenancy. The Landlords provided a copy of the Settlement and Decision from the prior dispute resolution hearing, dated March 10, 2009. Terms of the settlement included: the Tenants would seek and secure alternate accommodations to the best of their ability as soon as possible; and the Landlord will again seek an order of possession should the conditions in the tenancy warrant it. The Landlord testified that the Tenants had not secured alternate accommodations and she applied for an order of possession so that the rental unit could undergo emergency repairs which require the unit to be empty.

The Landlord testified that she had offered to pay for a hotel and storage of the Tenants' belongings for a period of six days, but that the Tenants had refused her offer. The Landlord stated that she is not prepared to reconsider the mutual end to tenancy and the settlement that was reached between the parties on March 9, 2009 at the prior Hearing. The Landlord testified that there are no other vacant habitable rental units available at the rental property where the Tenants could temporarily relocate while they were attempting to find alternate accommodation.

The Landlord stated that she believed the Tenants had more than enough time to find alternate accommodation.

Tenants' evidence

The Tenants' advocate gave evidence on behalf of the Tenants at the Hearing. She testified that the Tenants require secure housing, because of a court order regarding one of the Tenants. A hotel is not considered by the courts to be secure housing. The Tenants' advocate stated she believes the Landlords are harassing and bullying the Tenants. She stated that the Tenants have been checking the local newspapers and three electronic sites (Craigs List, Castanet and Kiniji) for alternate accommodations, but that the vacancy rate in the area is currently .04%.

Analysis

The Landlords' application, together with the supporting evidence which was duly provided to the Tenants prior to the Hearing, included a request to end the tenancy under Section 56.1 of the Act (*tenancy frustrated*) and under Section 56(2)(a)(ii) (*tenant seriously jeopardized the health or safety of the Landlord*). I find that the Landlord did not provide sufficient evidence to warrant ending the tenancy early under Section 56(2)(a)(ii).

The flood, due to no fault or negligence on the part of the Landlords or the Tenants, is the second ground on which the Landlord is seeking an early end to this tenancy. I am satisfied by the expert evidence submitted by the Landlord, that the rental unit has suffered significant water damage. In order to facilitate repairs to the rental unit, the water supply will be shut off for two months. The kitchen cabinets (upper and lower), kitchen countertops, bathroom cabinets, kitchen sink, bathroom sink, toilet, shower and taps will be removed. The laminate floors in the kitchen and living room will have to be replaced. The Tenants contents will have to be removed from the cabinets, as well as the furniture in the kitchen and living room areas, in order for these procedures to take place.

It is clear that the longer the Tenants remain in the rental unit, the greater the potential risk to their health.

I find that the Landlords have proven the need for an early end to tenancy due to frustration.

The Landlords are entitled to an immediate Order of Possession and I make that order.

The Landlords have been successful in their application and are entitled to recover the filing fee in the amount of \$50.00 from the Tenants. Pursuant to Section 72(2)(b) of the Act, the Landlords may retain this amount from the Tenants' security deposit.

Conclusion

The Landlords may deduct the amount of \$50.00 from the Tenants' security deposit.

Under Section 56.1(2) of the Act, I find that the Landlord is entitled to an Order of Possession and I hereby issue the order effective two days from service of the order. This order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

April 23, 2009
