Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord, the tenant ("tenant") and the occupant/wife of the tenant, attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the Application for Dispute Resolution hearing notice and first written evidence package on November 3, 2014 by personally handing it to the tenant. The landlord testified that he served the tenant with his second written evidence package on November 7, 2014 by personally handing it to the tenant. The tenant confirmed that he received these documents from the landlord, as described above. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was served with the above-noted documents as declared by the landlord.

The landlord testified that he served the tenant with his third written evidence package on November 14, 2014 by personally handing it to the tenant. The tenant confirmed that he received the landlord's third written evidence package on November 10, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's third written evidence package, as stated by the tenant on November 10, 2014.

The landlord served additional evidence, a utility bill, on the tenant on November 14, 2014. The tenant stated that he received this additional evidence from the landlord. At

the time of the hearing, I had not yet received a copy of this evidence, although the landlord stated that he faxed the evidence to the Residential Tenancy Branch (RTB) on November 14, 2014. I received a copy of this evidence after the hearing on November 19, 2014. In any event, I do not find this evidence to be material or relevant to the hearing and therefore I did not consider it.

The tenant testified that he served the landlord with his first written evidence package on November 7, 2014 by personally handing it to the landlord. The tenant testified that he served the landlord with his second written evidence package on November 10, 2014 by personally handing it to the landlord. The landlord confirmed that he received these documents from the tenant. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was served with the above-noted documents as declared by the tenant.

Issue(s) to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2013 for a fixed term ending on May 31, 2015. Monthly rent is payable in the current amount of $2,400.00 on the first day of each month. A security deposit of $1,150.00 was paid by the tenant on May 6, 2013. There is a written tenancy agreement that was provided with the landlord's application. The tenant DHK is the only tenant listed on the tenancy agreement, although SML is an occupant of the rental unit. The tenant and occupant continue to reside in the rental unit.

During the hearing, the landlord amended his application to correct the spelling of the tenant's name to that appearing on the cover page of this decision.

The landlord testified that he was notified by the tenant and occupant on August 28, 2014, that there was water entering the kitchen area from the bathroom. He states this is from a broken pipe. He further testified that the tenant and occupant did not cause this damage. The landlord called plumbers and a handyman to attend at the rental unit a few days after August 28, 2014. He states that the tenant and occupant prevented access to the rental unit for repair work to be done, from October 2 or 3 until October 14, 2014. On October 14, 2014 or a few days later, the insurance company examined

the rental unit and observed a broken pipe, running water and mold. As per the landlord's evidence, the insurance company stated that the kitchen cabinets and walls needed to be removed and two machines were placed in the rental unit on October 15 or 16, 2014 to extract the water and mold, costing $500.00 per day. The landlord testified that the tenant and occupant prevented access to the rental unit for repairs to be done on October 25, 2014.

The landlord stated that extensive work needed to be completed, including kitchen work and removing and fixing the bathroom pipe, and that it would cost $15,000.00 or more but he did not know the amount. The landlord's summary to the RTB, dated November 5, 2014, states that the restoration company wished to start repairs on November 10, 2014 but that they had to delay this process.

The landlord provided black and white photographs of various areas of the bathroom, which were affected by water damage and possible mold. It is difficult to see the damage or any possible mold, given the dark quality of the photographs supplied. The restoration company's initial site report, provided with the landlord's application, states that mold and asbestos testing is still required.

The landlord did not provide an estimate of repairs to be completed, as the restoration company stated in their reports that they were unable to complete an estimate due to an inability to enter the rental unit. The "initial site report" from the restoration company simply states that "reserves" for "structural" is in the amount of $15,000.00. The report also states that "a repair estimate will be prepared for your review" and "all efforts have been made to mitigate the loss as per industry standards." The report also states that the walls, windows and flooring in "room 1" of "floor 1" were damaged and that mitigation action was taken to perform extraction, protect contents with plastic and that a dust control barrier was required.

The occupant testified that upon move-in in June 2013, she first mentioned to the landlord, an area of water on dark colored wood that had been painted over, between the boiler and kitchen wall. At that time, the landlord had said it was "nothing," according to the occupant. She testified that on August 13, 2014, in good faith, she again mentioned this same area of water to the landlord, stating that there was no running water there.

The tenant provided a communication log with his written evidence, which supported his and the occupant's oral testimony at the hearing. The tenant testified that a plumber attended at the rental unit on August 21, 2014. On September 24, 2014, the plumber came back again and fixed loose silicone in the shower area, opened a small area of

the kitchen wall and boiler room wall and then temporarily covered it, saying that a restoration company would fix the walls later. On September 29, 2014, a restoration company representative came over to inspect the walls and the area of water near the kitchen wall. On October 9, 2014, the company returned to examine the walls again, advising the tenant that they would have to demolish the kitchen and bathroom walls, that the repairs were not time-or-weather-sensitive and that the tenant's schedule was more important to the company to perform this major repair. On the same date, the company installed two air purifiers in the rental unit, just in case there was mold. The tenant stated that the insurance company was not aware if there was any mold in the area. On October 20, 2014, the restoration company project manager and another representative examined the walls again, stating the same information as on October 9, 2014 and advising the tenant that it would take four to six weeks for the repairs to be completed if all went "perfectly" but not to rely on this information.

On October 24, 2014, the tenant and landlord met to discuss the repairs, the landlord stated that it would only take 3-4 days as it was a simple job, asked the tenant to store his property in the bedrooms and to return in a few days when the repairs were complete. The tenant advised the landlord that the restoration company estimated significantly more time for repairs and the tenant would need more information from the restoration company. On October 25, 2014, the landlord and tenant met again, the landlord stated repairs may take 45-90 days so he asked the tenant to leave for 3 months and return when the work was complete. The tenant requested a written proposal with a repair timeframe from the landlord but this request was refused. On October 27, 2014, the landlord called the tenant to advise that the insurance company was pushing forward a date to start repairs on November 1 or 2, 2014 and for the tenant to vacate the rental unit before then. The tenant called the restoration company who advised that the landlord may be afraid of losing insurance coverage by starting repairs late.

On November 1, 2014, the tenant received a letter from the landlord stating that he required the tenant and his family to vacate the rental unit by November 7, 2014 until the repair work was finished in approximately 60 days, after which they could return. The tenant states that the landlord was not willing to discuss the matter with him. On November 3, 2014, the restoration company called the tenant to start work on November 10, 2014 and the tenant advised the company that they had not agreed to any repairs or to leave the rental unit, as of yet.

The tenant states that neither he nor the occupant, prevented access to the landlord, any workers or the restoration company, to enter the rental unit. The occupant testified that the landlord has a key and pass code to the rental unit, and the boiler and electric

switchboard for the whole house are located in the rental unit. The occupant testified that the landlord has frequently entered the rental unit without notice or permission previously, and has cited emergency repairs as a reason to enter for fixing such things as the tenant's internet.

The tenant states that he and the occupant have attempted to cooperate with the rental unit repairs. He has not been given any written notice to date, from the landlord, to enter the rental unit for any assessments or repairs to be completed, aside from an eviction letter on November 1, 2014. Any notice has been given by telephone or email. Despite this, the tenant and occupant have permitted access by the landlord to enter the rental unit for assessment and repairs, which occurred from August to October 2014. The occupant testified that there may have been one time where she did not permit access to the rental unit on that date because she was at work and could not be present. The tenant states that there is water damage in the rental unit but the restoration company does not know the source of this water and has to break down the walls in order to determine the source. The insurance company's letter, dated November 4, 2014, supports this fact.

The tenant states that there are no health concerns for his family, including his young child, currently in the rental unit. He states that any potential environmental concerns are undetermined as per the restoration company's initial site report. There are no current signs of water running, water damage or mold in the unit, as per the tenant's testimony.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 56 of the Act requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than 30 days as per a 1 Month Notice, due to the reasons identified in section 56(2)(a) **and** that it would be unreasonable or unfair for the landlord to wait for a 1 Month Notice to take effect.

The landlord cited section 56(2)(a)(v) of the *Act* as the reason for his early end to tenancy request:

> *(a) The tenant or a person permitted on the residential property by the tenant has done any of the following:*

...(v) caused extraordinary damage to the residential property...

The landlord states that the tenant and occupant are causing extraordinary damage by preventing access to the restoration company to assess damage and complete repairs in the rental unit, relating to water damage. However, the landlord also testified that the water damage was not caused by the tenant or his occupant.

The landlord states that this is "emergency" damage that must be fixed immediately. The landlord further states that the damage is over $15,000.00 and is increasing due to his ongoing inability to repair this damage. However, I find on a balance of probabilities that this water problem existed upon move-in in June 2013, when it was first mentioned to the landlord, who dismissed the complaint. When the issue was again mentioned to the landlord in August 2014, no repair work was actually started until September 2014, as per the tenant's testimony. The landlord gave an eviction letter to the tenant regarding these required repairs on November 1, 2014, rather than in August, September or October 2014, even though his plumber attended the rental unit to assess the damage as early as August 21, 2014, as per the tenant's evidence, or a few days after August 28, 2014, as per the landlord's evidence. The landlord is concerned that his insurance company will not cover the damage due to a limitation date. There is a letter from the landlord's insurance company, dated November 4, 2014, to this effect.

The tenant has not prevented access for any repairs, emergency or otherwise, to be completed in the rental unit, and has, in fact, allowed access without proper notice from the landlord. Various assessments and repairs to mitigate loss have already been made for water damage. Further testing must be completed to determine whether any mold exists, the tenant states that there are no health concerns for his family and no water damage is visible to the tenant.

I am not satisfied that the landlord has met his onus, on a balance of probabilities, to end this tenancy early based on section 56(2)(v) of the *Act* and that it would be "unreasonable" or "unfair" for him to wait for a 1 Month Notice to take effect, once issued. During the hearing, the landlord stated that he did not want to evict the tenant and his family but simply wanted cooperation for repairs to be completed in the rental unit. During the hearing, the landlord also stated that the tenant and occupant may even be able to remain in the rental unit while the repairs are being completed. In fact, the landlord offered the tenant and his occupant an opportunity to leave their belongings in the rental unit during the repairs and come back during the day to work, as per his "reply to tenant's evidence" letter, dated November 10, 2014, which the landlord provided with his application. He later stated during the hearing, that he only wished for

the tenant and his family to vacate the rental unit while repairs are being completed and that they could return once the repairs are complete. Based on these statements at the hearing, it does not seem that the landlord is even seeking an end to this tenancy. While further repairs are required for water damage, the landlord has not demonstrated that he cannot wait until a 1 Month Notice or a 2 Month Notice for Landlord's Use of Property, can take effect. In fact, during the hearing, the landlord stated that he would be willing to wait until December 7, 2014, which would have been 30 days from the move-out date proposed by the landlord in his eviction letter to the tenant, of November 7, 2014. No effective date to end this tenancy has been proposed as the landlord has not issued either a 1 Month Notice to End Tenancy for Cause or a 2 Month Notice to End Tenancy for Landlord's Use of Property, another potential option available to the landlord

For the reasons outlined above, I dismiss the landlord's claim for an early end to this tenancy and I deny an Order of Possession in this instance.

As the landlord was unsuccessful in his Application, he is not entitled to recover the filing fee for his Application from the tenant.

Conclusion

I dismiss the landlord's claim for an early end to this tenancy and I deny an Order of Possession in this instance.

The landlord is not entitled to recover the filing fee for his Application from the tenant. The landlord must bear the cost of his own filing fee.

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: November 27, 2014

Residential Tenancy Branch