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 attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although the hearing lasted for approximately 54 minutes.

The landlord gave sworn testimony that a 1 Month Notice to End Tenancy for Cause, dated October 17, 2014 ("1 Month Notice"), with an effective move-out date of November 30, 2014, was posted to the door where the tenant was residing in the rental unit, on October 17, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 1 Month Notice on October 20, 2014, the third day after its posting.

The landlord testified that she served the tenant with the Application for Dispute Resolution hearing package ("Application") on October 25, 2014 by posting the Application to the door where the tenant was residing in the rental unit. She testified that the package included miscellaneous letters, 2 black and white pictures, 22 colored pictures, and a USB memory stick that included 29 colored pictures, 4 videos and 1 PDF document. The landlord testified that an individual, KG, witnessed the posting. The landlord confirmed that she was not proceeding with her amended application, which did not include an order seeking the filing fee, and she was only proceeding with her original application as noted above. In accordance with sections 89 and 90 of the

Act, I find that the tenant was deemed served with the Application on October 28, 2014, the third day after its posting.

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 approximately five to six years ago, but she could not recall the exact date. She testified that this was a month-to-month tenancy with rent payable monthly in the amount of $775.00 on the first day of each month. A security deposit was paid by the tenant, but the landlord could not recall the exact amount or date of such payment. There is no written tenancy agreement but rather an oral tenancy agreement, as per the landlord's testimony.

The landlord testified that the tenant occupies a separate, self-contained basement suite with a separate entrance door, in her duplex. The landlord occupies the upper portion of the duplex, which has a separate address from the tenant's unit. The landlord's unit has a laundry room which is downstairs, but is separated from the tenant's unit by a wall.

The landlord testified that she noticed that the tenant had been moving his belongings from the rental unit and that she noticed boxes and large moving trucks over the last two weeks. She stated that she looked into a window of the tenant's rental unit and noticed that one of the rooms was completely empty of the tenant's belongings, when it was previously heavily cluttered, as per the pictures she submitted with her Application. When questioned as to whether she still required an early end to tenancy or an Order of Possession, she stated that she did require one, as she wanted to make sure that the tenant was not coming back to the rental unit. The landlord testified that she was unsure as to whether the tenant had vacated the rental unit, and that she had not talked to him or entered the rental unit to inspect, for fear of confrontation with the tenant. The landlord testified that she had previously advised the tenant that she was willing to forego his rental arrears owing, if he vacated the rental unit, but that he had slammed the door in her face, causing her to fear further confrontation.

The landlord testified that she noticed water flooding her unit when she went to do laundry on October 9, 2014. She called a plumber that same day, who came to inspect

the unit and assumed it was a hot water tank issue. On October 10, 2014, the plumber returned to inspect the unit again, determining that it was not a hot water tank issue. The landlord telephoned the tenant on October 10, 2014 to determine the cause of the problem and the tenant advised that the main water pipe had burst and to shut the water off from outside. The plumber shut the water off from outside that same day and determined that the water had been leaking for over a month. The landlord testified that she never noticed a water leak previously, as she does laundry one to two times per week. The landlord testified that the plumber fixed the main water pipe on October 10 or 11, 2014.

The landlord testified that she provided a verbal notice to the tenant and then a written notice on October 14, 2014, of which she provided a copy with her Application. The notices asked the tenant to clean his rental unit, in order for repairs to the water damaged areas to be carried out, citing health and safety concerns, a fire hazard and possible mold forming if the water damage was not cleaned up.

The landlord called her insurance company, who in turn contacted a restoration company to inspect and fix the water damage. The restoration company provided a letter, dated October 22, 2014, which the landlord enclosed with her Application. The letter discussed the water damage, fungal growth, fire and safety concerns, the inability of the company to access the tenant's rental unit because of contents blocking many areas and the risk to the tenant's health. The landlord provided pictures and videos of the tenant's unit, showing exposed electrical wires, black mold in different areas and large amounts of clutter piled throughout the rental unit. The landlord testified that the restoration company inspected the rental unit, cleaned some water damage and installed a dehumidifier in the rental unit. The landlord testified that she was provided with progress reports from the restoration company but she did not provide any with her Application. The landlord testified that work must be completed in the rental unit, including tearing down the walls, carpet and flooring, plumbing, as well as cleaning of mold stains on the fixtures and fridge/stove area.

The landlord testified that the smell from the tenant's rental unit is bothersome and that she had an air purifier installed in her bedroom. The landlord was not asked by the restoration company to vacate her unit for health or safety concerns, but the tenant was recommended to be removed from the rental unit because of health risks and to prevent further damage to the rental unit, as per the restoration company letter. The landlord provided a letter, dated October 21, 2014, with her Application, from her plumber regarding the extent of the water damage, the repairs to be completed and the health risks to the tenant. The landlord testified that she was concerned about the health risks to the tenant of residing in the rental unit.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, videos and miscellaneous letters, and the testimony of the landlord, 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 November 30, 2014, the effective date identified on the 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 the 1 Month Notice to take effect.

The landlord cited the following reasons for the issuance of the 1 Month Notice:

> *Tenant or a person permitted on the property by the tenant has:*
> - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
> - *put the landlord's property at significant risk;*
>
> *Tenant has caused extraordinary damage to the unit/site or property/park;*
>
> *Tenant has not done required repairs of damage to the unit/site.*

The landlord did not provide any evidence that the tenant was required to complete any repairs of the water damage to the rental unit. She simply stated that had she known about the water damage earlier when it first started, that she could have completed repairs to the unit earlier. In any event, failure of the tenant to complete repairs is not a reason provided under Section 56(2)(a) of the *Act*, to end a tenancy early.

The landlord did not provide any medical or other documentary evidence that her own health or safety was "seriously jeopardized" by the tenant, as per Section 56(2)(a)(ii). She provided letters from the plumber and restoration company, discussing the tenant's health and safety being at risk, but not her own. The landlord was not asked by the restoration company to vacate her unit for health or safety concerns. The restoration company stated that there was fungal growth in the tenant's unit only, not the landlord's unit. The landlord continues to live in her unit and testified that she was bothered by the smell and had an air purifier installed. The landlord has not attempted to even contact the tenant to determine whether he has vacated the rental unit or whether further repair work can be done at this time, in order to remedy the situation.

Regarding the requirement for “significant risk” to the landlord’s property under Section 56(2)(a)(iii), the landlord provided a letter from the restoration company stating that there was a possible fire hazard from electrical cords and power bars sitting on wet carpet, which could cause electrocution. However, the landlord continues to reside in her unit, which is above and beside the tenant’s rental unit, was not asked to vacate her unit for safety concerns and testified that she was more concerned with the health risk to the tenant. The landlord has not attempted to follow up with the restoration company to determine whether any further work can be done now that the tenant has emptied one of the rooms and may have vacated the unit, as per the landlord’s testimony.

Regarding the requirement for “extraordinary damage” to the unit caused by the tenant under Section 56(2)(a)(v), the landlord did not provide an estimate of the repair costs or the extent of the work required to be completed to repair the rental unit, from the restoration company who would be completing the repair work. She simply provided a letter from her plumber, stating that extensive work needed to be done to certain areas.

I am not satisfied that the landlord has met her onus, on a balance of probabilities, to end this tenancy early based on the reasons in Section 56(2)(a)(ii)(iii) or (v) and that it would be “unreasonable” or “unfair” for her to wait for the 1 Month Notice to take effect on November 30, 2014, which is twenty days from today. The landlord testified that the tenant has been moving his belongings over the past two weeks, she has witnessed boxes and moving trucks outside the rental unit and she noticed that one of the rooms was completely empty, whereas before it was cluttered and she was unable to walk clearly through the area. She stated that the tenant seems to be vacating the rental unit but she is unsure, as she has not attempted to enter the rental unit or talk to the tenant to confirm whether he has left the rental unit. She states that she requires the early end to tenancy and an order of possession, simply to ensure that the tenant does not return to the rental unit. I find that the landlord has not established that it would be unreasonable or unfair to wait for the 1 Month Notice to take effect on November 30, 2014.

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

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 her Application from the tenant. The landlord must bear the cost of her 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 17, 2014

Residential Tenancy Branch