Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlord applied to the Residential Tenancy Branch [the 'RTB'] for an expedited hearing for Dispute Resolution. The landlord asks me for the following orders against the tenant.

1. Exclusive possession of the rental unit in favour of the landlord.
2. Reimbursement for the $100.00 filing fee for this application.

The landlord appeared at the hearing on 11 April 2023. The tenant failed to appear.

Preliminary Matter - Non-appearance at the Hearing

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1100 hours and ended at about 1132 hours. I confirmed:

1. that the landlord affirmed that they posted a copy of this Notice of Hearing to the tenant's door on the same day that they received the notice from the RTB;
2. that this notice recorded the correct call-in numbers and participant codes for the hearing; and
3. by reviewing the teleconference system, that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant failed to attend this hearing, but I conducted it in the tenant's absence. The landlord's evidence satisfied me that they had correctly notified the tenant of this hearing and how to participate.

Issues to be Decided

Would it be unreasonable or unfair to the landlord or other occupants to wait for a Notice to End Tenancy for Cause [the 'One-month Notice'] to take effect?

Should the tenant reimburse the landlord for the cost of this application?

Background and Evidence

The landlord testified under affirmation as to a variety of issues with the tenant, including allegations of strata-bylaw infractions; theft; unpaid rent; harassment of other tenants in the building; and damage to the rental unit and the building in which the unit is.

Regarding the last issue, the landlord's testimony was that in December the tenant and or their guests [the 'Guests'] broke the door to the building. The landlord told me that they heard that the tenant and or Guests smashed the glass door that gave access to the building, and then made holes in two of the interior walls somewhere in the building.

To corroborate this evidence, the landlord provided a copy of an e-mail from the building manager. This e-mail reads (in part):

> '…on several occasions [the tenant's] visitors have caused very expensive damage to the building, to mention the most important was that they broke the main glass door in the lobby, in addition to damaging the walls, also in the lobby. The person who did this damage always walks around with [the tenant] in the building…'

Attached to this e-mail were three photographs. One depicted the entryway of a building, with a glass door all but entirely destroyed. The other two photo's depicted holes in drywall.

The landlord also testified that in December someone told them that the tenant broke a laundry machine in the rental unit, which cost the landlord almost $500.00 to repair. This was corroborated in part by a copy of an invoice for repairs.

And the landlord told me that in November they heard that the tenant had a leak in the rental unit, but refused to permit the building manager to enter the unit in order to fix the leak. This refusal to have the leak fixed caused (says the landlord) water to leak from the tenant's unit into a neighbouring unit beneath. The landlord told me that this leaking water resulted in expense to the landlord to repair damage to the neighbouring unit.

An e-mail from the building manager corroborated this evidence. It read, in part:

> 'I couldn't make any revisions in your unit since your tenant didn't allow me access; [the tenant] said [they] would report it to you; It must be a leak in the kitchen faucet under the sink, but I can't check it. I also want to let you know that there is damage in the unit below…'

The landlord told me that they and the building manager have attempted to address these behaviours with the tenant, but that the tenant refuses to communicate with them.

The landlord also told me that they had received a complaint at the beginning of this month that the tenant took a package that had been delivered to another occupant of the building.

There was no evidence before me to contradict that offered by the landlord.

Analysis

Sections 56 (2) (a) (iv) (C) and (v) of the *Residential Tenancy Act* [the 'Act'] say that I may order that a tenancy ends on a date earlier than it would if a landlord issued a One-month Notice if:

- the tenant (or a person permitted on the residential property by the tenant) caused extraordinary damage to the residential property; or

- the tenant engaged in illegal activity that has jeopardized a lawful right or interest of another occupant; and
- it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a One-month Notice.

What qualifies as ‘extraordinary damage’? In helping me answer this question, I considered a definition of ‘extraordinary’ adopted by the Supreme Court of British Columbia. That court accepted that ‘extraordinary’ means, ‘not according to the usual custom or regular plan’ [see paragraph 14 of *Sutherland* v. *Sutherland*, 1998 CanLII 4592 (BCSC)].

So, did the tenant or a Guest cause damage to the building that is irregular or uncustomary? In other words, did the tenant damage the building in such a way that one couldn’t expect such damage as part of the regular or customary use of the building?

Clearly, in destroying the front door to the building and making holes in the walls of the building, the Guests of the tenant damaged the building in an extraordinary way: no one could expect such damage to be part of the regular or customary use of the building.

It is unclear to me what the damage to the unit’s laundry machine was, or how it was caused. But the amount the landlord had to pay to repair it does seem significant.

And I accept that the leak issuing from the tenant’s unit caused damage to the unit of another occupant of the building. The landlord’s evidence is that the tenant actively prevented the leak to be fixed, which seems to have then resulted in damage to the neighbouring unit. While such a leak might be expected as part of the regular use of a unit, the decision to prevent it being fixed is extraordinary.

So, I have decided that the tenant and their Guests have caused extraordinary damage to the rental property. Now I must determine whether it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a One-month Notice to end this tenancy.

I note that there is no evidence that the tenant or their Guests have damaged the property since December. And while someone complained that the tenant took a package belonging to another occupant of the building, the landlord did not call any witnesses to this alleged theft. For example, the occupant to whom the package

allegedly belonged was not a witness at this hearing to tell me about seeing the tenant take the package.

Indeed, all of the allegations that the landlord made against the tenant were based on statements made to the landlord by the building manager. When I asked the landlord if the building manager would be attending the hearing as a witness, the landlord told me that the building manager was, 'too busy'.

As noted above, the last time the landlord told me the building manager alleged that the tenant or their Guests damaged the building was three or four months ago. The recent allegation of theft is unsupported by any witness evidence. In other words, no one appeared at the hearing to tell me that they observed the tenant take something that did not belong to them, or do something to damage property, or harass another occupant, *etc*.

Considering that:

- there have been no allegations of damage for several months now; and
- no one attended the hearing to tell me what they saw the tenant stealing or doing to harass others;

I find it reasonable and fair to have the landlord and other occupants of the residential property wait for a One-month Notice.

An application to obtain an order of possession without first serving the tenant a One-month Notice is for situations of imminent danger to the health, safety, or security of a landlord or tenant. There is no compelling evidence before me of such a situation existing in the last few months. And so there is no indication of imminence.

Conclusion

I dismiss this application, with leave to re-apply on a non-expedited basis.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 11 April 2023

Residential Tenancy Branch