



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: ET

Introduction

This hearing dealt with an application by the landlord to end the tenancy early and receive an order of possession. The landlord, an agent for the landlord and one tenant participated in the teleconference hearing.

Issue(s) to be Decided

Should the tenancy be ended early?

Background and Evidence

The evidence of the landlord was as follows. On August 31, 2009 the landlord told the tenants of 302 that they needed to gain immediate access to their suite for emergency reasons. Water was leaking from the bathroom ceiling of the suite below, and the landlord needed to do emergency repairs. The tenants refused to allow the landlord to enter. The tenants then repeatedly refused to allow the landlord to enter their suite, and the water continued to leak into the suite below and began to damage the ceiling. The tenants in the suite below moved out of their unit on August 31, 2009. The landlord has been losing revenue on that suite.

On September 8, 2009 the landlord, accompanied by the police, gained access to the tenants' suite and began to do repairs. The landlord attempted to gain access to the suite again to complete the repairs, but the tenants refused to allow access. The

landlord decided to wait until today's hearing before attempting again to access the tenants' suite.

The response of the tenant was as follows. The only reason the landlord filed this application was to gain access to the tenants' suite, and the problem is not an emergency situation. At the outset of the tenancy, the landlord had done some renovations to the bathroom in the rental unit, but they had not yet completed the repairs. In July 2009, the first month of the tenancy, the landlord on five occasions entered the tenants' suite for what they claimed was emergency repairs, and then proceeded to tell the tenants that they needed to use the shower properly, because water was leaking into the bathroom of the suite below. The tenants told the landlord that they need to have a professional to complete the bathroom repairs.

Analysis

Section 56 provides a remedy that is reserved for situations in which there is a serious measure of urgency, threat of imminent harm or liability risk such that it would warrant the immediate removal of the tenant from the premises without any notice and it falls on the landlord to establish that this is clearly the case.

Section 29 of the Act outlines the circumstances in which a landlord may enter a rental unit. A landlord may without prior notice enter a rental unit if an emergency exists and the entry is necessary to protect life or property. A landlord may also enter a rental unit after issuing 24 hours' written notice of their intention to enter for a reasonable purpose, such as for the purpose of conducting repairs.

In this case, the landlord chose not to enter the tenants' unit again either without notice for an emergency purpose or with prior written notice for a reasonable purpose.

I find that the landlord has not established such a serious measure of urgency or liability risk that warrants the immediate removal of the tenants. In fact, the landlord could have employed other means permissible under the Act to address this situation, but they chose not to do so.

Conclusion

The landlord's application is dismissed, with the effect that the tenancy continues.

Dated September 15, 2009.