DECISION

Dispute Codes: ET and FF

Introduction

This application was brought by landlords on January 28, 2010 seeking an Order of Possession under section 56 of the *Act.* This section permits such applications in situations where it would be unreasonable for the landlord to wait for an order under section 47 of the Act which requires a Notice to End Tenancy of a minimum of one full month. The landlord also requested recovery of the filing fee for this proceeding.

As a matter of note, the tenancy was the subject of a hearing on the landlords' application under section 56 of the *Act* on January 4, 2010. In the result, the application did not succeed and was dismissed without leave to reapply.

At present, the parties are scheduled to be heard on March 12, 2009 on the landlord's application for an Order of Possession pursuant to a Notice to End Tenancy for cause dated December 24, 2009, among other matters, and the tenants application for a Monetary Order and return of personal property, among other matters.

Issue(s) to be Decided

The present hearing requires a decision on:

1. Whether the decision of January 4, 2010 to dismiss the landlords' application without leave to reapply renders the present application as *Res Judicata* (previously heard) and therefore, ineligible for rehearing, or whether new evidence is of sufficient significance to warrant a new hearing;

2. If so, is there now sufficient cumulative evidence and to warrant an Order of Possession under section 56 of the *Act* in view of the pending hearing on March 12, 2009 to, among other matters, end the tenancy for cause

Background and Evidence

To summarize evidence brought forward at the hearing on January 4, 2010:

The landlords received notice from the municipality in September 2009 that the rental building, a single family dwelling, required inspection due to public safety concerns arising from unusually high hydro consumption said by the tenant to have resulted from the use of air conditioners. (According to the landlords in the present hearing, the inspection by a bylaw enforcement officer and fire inspector took place beyond the 24-hour notice and gave the tenant time to alter conditions in the home.)

The municipal inspection raised sufficient concern for the landlords that they engaged a home inspection service to conduct an inspection of the property on December 11, 2009 at a cost of $395.00.

In its "Final Comments," section, the report states that evidence indicates that, "a grow-op was at one time in operation or the intention is to install a grow-op." The report cites

a large hole in the lower side of the electric panel, the wiring appears disturbed, heavy electrical flex cable in the garage, the wall below the panel had been removed, replaced and the patch was incomplete, signs of moisture in the kitchen ceiling below the master bedroom, repaired damage to the ceiling of the master bedroom matching spacing of hooks in plywood stored in the garage, and many 1.5 gallon pots stored in one of the bedroom closet.

New evidence brought forward by the landlords includes a report dated January 20, 2010 from a company specializing in mould remediation following an inspection of the home on January 16, 2010.

That report includes the following observations and conclusions, among others,which I find to be pertinent to the present application:

Heating ducts in the crawl space and the crawl space door appear to have been tampered with;

Plant pots and “what appeared to be staging apparatus for the growing of plants;”

Moisture stains around the kitchen pot lights indicating possible mould in the ceiling cavity;

Leaky sinks in bathrooms and kitchen, p-trap in the master bedroom ensuite not attached and water below, p-trap leaking in main bathroom and fan not working;

“The walk-in closet in the master bedroom appears to have been used as a grow-op. The condition of the closet was poor with patches and screw holes. There was soil residue on the lower portion of the walls and soil on the floor at the base of the walls.

There were areas on the floor where it appears something had been taped over the floor and vents. The carpet looked like it had been removed and reinstalled poorly;

Signs of a crude ventilation system venting from the closet through the attic and out the roof;

There were elevated signs of Penicillium/Aspergillus in the master bedroom closet, 851 sport per cubic meter compared to 385.6 spores per cubic meter outside;

The landlord stated that the report author told him that Penicillim/Aspergillus is a fast growing mould that if not treated promptly could result in the necessity to remove the drywall from the master bedroom and closet for treatment. The company's estimate for early treatment of the whole home is $2,730.

The landlord also gave evidence that earth had been heaped along the hedge by a fence covering the lower slats and exposing them to rot. In addition, the tenant had without consent added locks to interior doors.

The landlord submitted estimates exceeding $20,000 to remediate the property.

The landlord stated that since the last hearing, another hole has been made in a wall and screens appear to have been cut.

He said that he felt it would be unreasonable for him to have to wait for the hearing of March 12, 2010 for an Order of Possession as the mould problem is worsening by the day, the tenant continues to cause damage to the property and he is concerned the tenant will escalate matters in retaliation.

The landlord stated that the tenant had agreed to vacate the property on January 31, 2010, but when the landlord attempted to arrange for the mover-out condition inspection report, the tenant stated that he had changed his mind and would remain until the expiry of the fixed term agreement on August 31, 2010.

The tenant stated that the bedroom closet carpet had been torn up to permit him to paint the closet, the electric bill had been high because he had used four air conditioners, and the pot containers had been brought to the property by his son for a friend and without his knowledge and consent.

Analysis

Having reviewed the mould remediation specialist's report of January 20, 2010, I find that it provides sufficient new and additional evidence to warrant the landlords' application of January 28, 2010 for an early end to the tenancy and that the present hearing is not precluded by the decision of January 4, 2010.

Given the amount of damage to the rental unit, I find that the landlords' need to regain possession of the property to prevent further damage and begin repairs is well founded.

I find that the tenant's explanations lack credibility and that his presentation during the hearing indicated no concern for the landlords' property.

Pursuant to section 56(2)(a)(iii) I find that continuation of this tenancy puts the landlords' property at significant risk and, as stated at section 56(2)(b) of the *Act,* it would be unreasonable and unfair to the landlords to require them to wait for the hearing under section 47 of the Act to obtain an Order of Possession.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service on the tenant.

February 10, 2010