



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ET

Introduction:

This is the Landlord's application for an early end to the tenancy and an Order of Possession.

Both parties signed into the teleconference and gave affirmed testimony at the Hearing.

The Landlord's agent DK testified that two of the Landlord's agents served the Tenant with the Notice of Hearing and copies of the Landlord's documentary evidence by posting the documents to the Tenant's door at 3:10 p.m. on June 9, 2011.

Issue to be Determined:

Has the Landlord shown that there is cause to end this tenancy and that it would be unreasonable or unfair to wait for a one month Notice to End Tenancy under the *Residential Tenancy Act* (the "Act") to take effect?

Background and Evidence:

The parties entered into a tenancy agreement on May 15, 2011. A copy of the tenancy agreement was entered in evidence. This is a 5 month fixed term tenancy, which commenced on June 1, 2011. The rental unit is in a building which is designated for seniors and/or persons with disabilities and houses approximately 300 tenants. It was built in 1973.

The Landlords agents gave the following testimony:

The Landlord is concerned about the condition of the rental unit and the safety of the Tenant and others in the rental property. On or about June 8, 2011, the Landlord's agent discovered that the Tenant had ripped the kitchen cabinets off the walls, exposing asbestos behind the walls. The Tenant had also torn the closet doors off their tracking, ripped up brand new tile and baseboards, and exposed some electrical wires near the exhaust fan in the kitchen. The Tenant was asked to stop and was warned that no renovations could take place without the prior written consent of the Landlord, pursuant to a term in the tenancy agreement. The Tenant was somewhat incoherent and replied that he would not guarantee that he would stop. He stated that the bath tub was not level and he was going to rip out the bath tub. The Landlord's agent testified that the bath tub was brand new.

The Landlord's agent LB testified that she is a registered psychiatric nurse. She met the Tenant the day before he moved into the rental unit and he seemed happy to be moving in. On June 8, 2011, when she saw him again there was a dramatic change in his demeanour and she was concerned that the Tenant was agitated and in a hyper manic state. The police were called and attended but declined to take the Tenant to hospital under the Mental Health Act for observation.

On or about June 13, 2011, the Landlord's agents visited the Tenant again at the rental unit. The suite was basically the same, but the Tenant had carved a picture into the wall and was using the closet doors as a TV stand. There were cigarette burns in the nearly new carpet. The Tenant's stove was on and there were papers and plastic near the hot element. The Tenant appeared to have no insight into the damage he had done and said he had \$1,100.00 to spend on renovations that would bring the rental unit up to his standards. He repeated that he was going to rip out the tub and the tub surround. The Landlord's agent LB called the Tenant's son and left a message for him to call her back, but her call remains unreturned.

The Landlord's agents estimate that the current damage will cost about \$15,000.00 to restore, including asbestos containment. This figure is based on remediation of two

other rental units: \$10,000.00 to remove asbestos from a 2 x 15 foot piece of ceiling; and another, yet uncompleted, job that has cost \$6,000.00 so far to fix fire damage in a kitchen. The Landlord's agent SA testified that every time the walls are opened up, asbestos specialists have to be present to safely contain or remove the asbestos and that this is very expensive. The Landlord is concerned for the safety of the Tenant, the Landlord's agents and other tenants in the building because of the exposed asbestos.

The Tenant gave the following testimony:

The cabinets in the kitchen are old and worn and the drawers were broken, so he wanted to replace them with cabinets and drawers that meet his standards. The Tenant noticed a spark coming from the exhaust fan in the kitchen when he turned the fan on. He is not an electrician, but he is a handyman.

The Tenant has an instruction manual for the tub and can see that it wasn't installed properly. The caulking is cracking and allowing moisture to get behind the wall, which causes mould. The Tenant is concerned about mould growth.

The Tenant is also concerned about bed bugs travelling to his suite from other areas of the building. Currently there are no bed bugs in his apartment, or any sign of mould growth.

The Tenant denies burning the carpet and states that the burn marks are actually fluff from his sweat suit. He stated that the Landlord's agents didn't bother to really look at the marks or they would realize that.

The Tenant told the Landlord's agent SA that the kitchen cupboards were not installed correctly, but SA said he didn't have time to deal with it.

Analysis:

In making an application for an early end to this tenancy the Landlord has the burden of proving that there is cause for ending the tenancy early, such as seriously jeopardizing the health and safety or lawful right or interest of the landlord or another occupant; placing the landlord's property at significant risk; and causing extraordinary damage to the residential property. The Landlord must also satisfy me that it would be unreasonable or unfair to the Landlord or other occupants to wait for a one month Notice to End Tenancy for cause under Section 47 of the Act to take effect.

The Tenant acknowledges ripping out the cupboards in the kitchen and wiring behind the range fan. During my questioning, the Tenant would not acknowledge that he has no right to make renovations without the Landlord's written approval. The photographs provided in evidence show a kitchen devoid of cupboards; electrical wiring hanging from a hole in a wall and a grey substance behind the wires alleged to be asbestos; and papers and plastic material on top of the range. If there were to be a fire and it spread quickly, the other occupants in the building are elderly or have disabilities and may not be able to evacuate the building in time. I accept the Landlord's agent's testimony that there is asbestos behind the walls in the rental unit and that exposed asbestos is a health hazard to those who come in contact with it. It is clear from the photographs and the oral testimony provided that the Tenant has caused considerable damage to the Landlord's property. There was no indication from the Tenant that he intends to stop making renovations to the Landlord's property.

Based on the affirmed testimony of both parties and documentary evidence of the Landlord, I am satisfied that the Landlord has proven that the Tenant has seriously jeopardized the health and safety or lawful right or interest of the Landlord or another occupant; placed the Landlord's property at significant risk; and has caused extraordinary damage to the residential property and that it would be unreasonable or unfair to the Landlord and the other occupants of the building to wait for a one month Notice to End Tenancy for cause to take effect.

I order that the end-of-tenancy date is today, June 20, 2011, and find that the Landlord is entitled to an Order of Possession effective **2 days after service of the Order upon the Tenant.**

Conclusion:

I hereby provide the Landlord an Order of Possession **effective two days from service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: June 20, 2011.

Residential Tenancy Branch