



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Muks Kum Ol Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession and for an early end to the tenancy.

The matter was scheduled to be heard, via teleconference, on August 29, 2013. The Agent for the Landlord stated that she made three unsuccessful attempts to dial into the teleconference on August 29, 2013.

The TELUS report indicates there were three attempts to join the teleconference, none of which were from my location. The Telus report indicates that the Landlord's phone number was used to call in at 12:59 p.m. and the caller remained on the line for 48 minutes; that a different phone number called into the line at 1:12 p.m. and the caller remained on the line for 2 minutes; and a third attempt was made at 1:22 p.m. and the caller remained on the line for 5 minutes. The Landlord faxed a letter to the Residential Tenancy Branch explaining the difficulty at 1:32 p.m.

There is no record of the Tenant phoning into the hearing.

The TELUS report does not record my attempt to join the teleconference, although I believe I dialed into the teleconference at 1:02 p.m. and remained on the line until 1:13 p.m. I therefore conclude that the Landlord was present in the teleconference and that there was a technical or human error that prevented me from joining the teleconference.

As this is an urgent matter, it was deemed appropriate for the hearing to be reconvened on August 30, 2013.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing for August 29, 2013, and documents that the Landlord wishes to rely upon as evidence were posted on the door of the rental unit on August 22, 2013. On the basis of the information before me, I find that these documents were served to the Tenant in

accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Agent for the Landlord stated that on August 29, 2013 the Residential Tenancy Branch provided her with a Notice of Hearing for August 30, 2013, via fax; that she posted this Notice of Hearing on the door the rental unit on August 29, 2013; and that she left a telephone message for the Tenant informing her of the reconvened hearing. As the Tenant did not attend the hearing that was scheduled for August 29, 2013 after being properly served with notice of that hearing and the Landlord made a reasonable attempt to inform the Tenant of the reconvened hearing, I find it appropriate to proceed with the reconvened hearing in the absence of the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to end this tenancy early and for an Order of Possession, pursuant to section 56 of the *Act*?

Background and Evidence

The Landlord is attempting to end this tenancy because the Tenant has an excessive amount of property in the rental unit and the unit is being kept in an unsanitary manner. The Landlord submitted photographs of the rental unit, which were taken on August 02, 2013, that show the rental unit is not clean and that there is an excessive amount of personal property strewn about the unit.

The Agent for the Landlord stated that the Tenant reported a plumbing leak in the unit on July 09, 2013; that the plumber hired by the Landlord made an emergency repair that fixed the reported leak; that the plumber indicated that additional work was required in the rental unit; that the plumber advised the Landlord that he would not complete further repairs in the unit due to the unsanitary condition of the rental unit, which included feminine hygiene products that have not been properly discarded; that on July 11, 2013 or July 12, 2013 the Landlord informed the Tenant that the rental unit needed to be cleaned; that the Tenant agreed she would clean the rental unit; that there was a flood in the neighbouring rental unit on August 02, 2013; that the plumber again had to access this rental unit as a result of the flood in the neighbouring unit; that the plumber advised the Landlord that the condition in the rental unit appeared unchanged; that on August 02, 2013 the Landlord delivered gloves and garbage bags to the rental unit; that the Tenant declined the Landlord's offer to clean the unit at the Landlord's expense; that the Landlord has not inspected the rental unit since August 05, 2013 so it is not known whether the condition of the rental unit has improved; that a One Month Notice to End Tenancy for Cause was served to the Tenant on August 22, 2013, which requires her to vacate by September 30, 2013; that the Tenant informed her that she does not believe she is required to clean the rental unit until the end of September; that on August 28, 2013 the plumber advised her that he needs to access the Tenant's crawl space to repair the plumbing in the duplex; that she does not know the precise nature of the plumbing repair; that the plumber advised her that there is a risk of a flood if the

plumbing is not repaired; and that the Tenant has cleared a path to the crawl space but the plumber is still refusing to complete the repairs.

The Landlord submitted no evidence from a plumber to show that there is an urgent need to complete repairs in the rental unit.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and that a landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

On the basis of the testimony of the Agent for the Landlord and the photographs that were submitted in evidence, I find that the manner in which this property is being maintained may be placing the Landlord's property at significant risk.

Section 56(2)(b) of the *Act* authorizes me to grant an Order of Possession in these circumstances only if it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

I find that the Landlord has failed to establish grounds to end this tenancy without proper notice. In reaching this conclusion, I am guided by section 56(2)(b), which stipulates that a tenancy should only be ended early if it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

I am not satisfied that it would not be unreasonable to expect the Landlord to proceed in accordance with section 47 of the *Act* for the following reasons:

- There is no evidence that the plumbing is currently leaking or that an emergency repair is currently needed in the rental unit
- There is no evidence, such as a report from the plumber, which corroborates the testimony that a delay in repairing the plumbing in the crawl space places the property at significant risk
- The Tenant has cleared a path to the crawl space so the area can now be accessed if there is an emergency in the crawl space or there is an urgent need to make repairs in the crawl space
- There is no evidence that the crawl space is unsanitary, so I cannot conclude that it would be unsafe for the plumber to work in the crawl space
- The Landlord has not inspected the rental unit since August 05, 2013 so it is possible the sanitary conditions in the unit have improved
- A One Month Notice to End Tenancy for Cause was served to the Tenant on August 22, 2013, so the Landlord will most likely regain legal possession of the rental unit on September 30, 2013.

Conclusion

I find that the Landlord has not established grounds to end this tenancy early, pursuant to section 56 of the *Act*. I therefore dismiss the Landlord's application to end the tenancy early and for an Order of Possession.

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: August 30, 2013

Residential Tenancy Branch

