



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OP

Introduction

This hearing dealt with an application by the landlord seeking an order of possession due to the tenancy becoming frustrated. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on or about December 1, 1995. Rent in the amount of \$494.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$203.50.

The landlord gave the following testimony:

The landlord stated that a fire occurred at 7:00 a.m. on May 15, 2014. The landlord stated that the local fire department and insurance company were on scene within an hour. The landlords stated that the fire department, local municipality and insurance company deemed certain areas of the building “evacuation zones” due to the fire and possible water damage to follow. The landlords stated that the subject unit was first deemed out of the evacuation zone but upon further inspection it was deemed to be in the evacuation zone.

The landlords stated that the issue facing the units in the evacuation zone is the abatement of asbestos and mould. The landlords stated that substantial amounts of water have seeped into the evacuation zone and that mould and mildew growth is expected. The landlords stated that 20 of 21 units have already vacated to allow the work to be conducted. The landlords stated that the insurance company; at the direction of the fire department and the local environmental authority deemed the evacuation area must be completely vacated.

The landlord stated that they have grave concerns about health risks if the tenant remains in the evacuation zone. The landlord stated that several community help groups including the Red Cross have offered assistance to the tenant but he declined. The landlords stated that the scope of work could take up to six months to complete and that it cannot be done with tenants living in the evacuation zone. The landlords stated that they are requesting an order of possession for as soon as possible.

The tenant gave the following testimony:

The tenant stated that he does not want to leave. The tenant stated that there is nothing wrong with his unit and that he is not concerned about health risks. The tenant stated that he doesn't agree with the local authorities that he will be at risk if they remove asbestos from the walls. The tenant stated the unit is still habitable and that the landlords are overreacting to the situation.

Analysis

The test for determining that a contract has been frustrated is a high one as noted in the Residential Tenancy Policy Guidelines. It states "The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned". I find that this situation meets that test. Through no fault of either party I find the tenancy to be frustrated. I accept the difficulty the tenant has in finding a new home after a lengthy tenancy however the possible risk is too great to ignore. Although the tenant feels the situation was safe he was unable to provide disputing evidence from a competent or expert body or

association. Based on the above facts and on the balance of probabilities I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Based on the timing of this hearing and the nature of the work to be conducted I find that the tenancy is to come to an end by no later than July 15, 2014.

Conclusion

The landlord is granted an order of possession for 1:00 p.m. on July 15, 2014.

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 25, 2014

Residential Tenancy Branch

