



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an application by the landlord for an early end of tenancy and an order of possession. The tenant was personally served with the application for dispute resolution and Notice of Hearing. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Should the tenancy end early? Is the landlord entitled to an order for possession?

Background and Evidence

The rental unit is a strata title apartment in an apartment building. The landlord is the owner of the unit and he lives in a different strata unit in the same building. The tenancy began in May, 2013. The current rent is \$770.00 per month. The tenant paid a \$380.00 security deposit at the start of the tenancy. The landlord testified that there is a written tenancy agreement, but he did not supply a copy as evidence.

On March 5th or 6th, 2015 water flooded into the rental unit from the strata unit directly above it. According to the landlord the flood was due to an overflowing bathtub. The tenant said that the flood occurred on March 5th.

The landlord claimed in his application that after the flood occurred contractors were called to do repairs. The landlord that the tenant has ignored notices given to him telling him that he needs to move out of the rental unit. The landlord claimed that his contractors installed drying fans in the rental unit and the tenant turned them off. The landlord said he offered to have the tenant move inot a hotel for several days while repairs were performed. He also said that his contractor has advised that there is asbestos in the rental unit that has come out of the ceiling and floor due to the flood. He said that it is unsafe for the tenant to live in the rental unit and he must move out

immediately. The landlord also claimed that the tenant has been loud and abusive and has torn up and discarded the written notices that have been given to him by the landlord.

The tenant testified that on the morning of March 5th water was coming down into the rental unit from the ceiling. The tenant put out some large containers to catch the water and called the landlord. The tenant said that the landlord called a restoration company and some men came to the rental unit, talked to the landlord and then left. The tenant said that he waited from March 5th to March 18th before the landlord returned and spoke to him about going to a hotel for a week. Later that day the tenant came home to find three large drying machines inside his suite. It was noisy and very hot inside the suite and the tenant turned off the machines, but he shares the lower floor with another tenant who attended as the landlord's translator and witness. The landlord provided copies of several handwritten notes given to the tenant. One of the notes dated March 18th stated:

Please be advised the workmen and I will be entering your suite for the next few days to run dryers and remove ceilings and carpet. The whole procedure will take until Sat., March 21, 15 or until Sunday March 22, 15.

I will pay for you to stay in a hotel while this project is underway.

The hallway has to be curtained and nobody can live in the suite while this is in progress.

The landlord testified that a contractor has advised that there was asbestos detected in the rental unit. The landlord claimed that he had a letter from the contractor, but he did not provide a copy.

The tenant said that the landlord has performed no repairs during the tenancy. He said that he is planning to move out and hopes to find new accommodation by April 15th, but he said that he intends to move out by the end of April at the latest. The tenant said that he found it impossible to read the landlord's handwritten notes.

Analysis

Under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish that "it would be *unreasonable, or unfair* to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47" (emphasis mine). I am not satisfied that this

unreasonableness or unfairness exists. The landlord took no steps for more than 10 days after the flood occurred. The landlord has not provided documentary evidence that the rental unit should not be occupied and there is no document stating that the rental unit must be vacated to comply with an order of the government or municipality. The landlord has not satisfied the burden of showing that the tenant done anything to justify ending the tenancy and that it would be unreasonable to wait for a notice to end the tenancy to take effect. The fact that there was a flood, not caused by the tenant is not a matter that would justify the use of the extraordinary remedy of ending the tenancy without notice and accordingly I dismiss the landlord's application. The landlord is at liberty to serve the tenant with a Notice to End Tenancy based upon an appropriate ground, using the proper form under the *Residential Tenancy Act*. The landlord will bear the cost of the filing fee for this application.

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: April 08, 2015

Residential Tenancy Branch

