Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AZIZAMALCO HOLDINGS CO.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ET and FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has applied for an Order of Possession, for an early end to the tenancy, and to recover the fee for filing this Application for Dispute Resolution.

At the outset of the hearing Legal Counsel for the Landlord stated that the rental unit has been vacated and that the Landlord therefore withdraws the application for an Order of Possession and an early end to the tenancy.

Legal Counsel for the Landlord stated that the Landlord still wishes to pursue the claim to recover the fee for filing this Application for Dispute Resolution. He was advised that we would need to proceed with the hearing to determine if there is merit to the Landlord's Application for Dispute Resolution before I could determine if the Landlord was entitled to recover the filing fee. Legal Counsel for the Landlord indicated his intent to proceed.

The Agent for the Landlord stated that he personally served the Application for Dispute Resolution and the Notice of Hearing to the Tenant, although he cannot recall the date of service. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act*)*;* however the Tenant did not appear at the hearing. As the documents have been served to the Tenant, the hearing proceeded in her absence.

On December 14, 2015 the Landlord submitted a large package of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted to the door of the rental unit on December 11, 2015. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 88 of the *Act;* and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to recover the fee paid to file this Application for Dispute Resolution?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on April 01, 2014.

The Landlord submitted a copy of a tenancy agreement for unit #410, which declares that:

- the Respondent is both the Tenant and the Landlord;
- the tenancy is for a fixed term for the period between April 01, 2014 and March 31, 2015;
- the tenancy continues on a month-to-month basis after March 31, 2015; and
- rent of $1,140.00 is due by the first day of each month.

The Agent for the Landlord stated that:

- until recently, the Tenant has been the resident manager of the residential complex;
- the Tenant's employment was terminated on November 27, 2015;
- on November 25, 2015 he sent a note to all occupants of the residential complex advising them that the Tenant was no longer the resident manager;
- the Tenant resides in #209 of this residential complex;
- the Tenant subleases unit #410 to "other people";
- on November 27, 2015 he posted a One Month Notice to End Tenancy for Cause on the door of the rental unit;
- the One Month Notice to End Tenancy declared that the rental unit must be vacated by December 27, 2015;
- the Tenant disputed the One Month Notice to End Tenancy;
- a hearing has been scheduled for January 27, 2016 to determine the merits of the One Month Notice to End Tenancy;
- on December 31, 2015 the Tenant sent an email to the Landlord declaring that the rental unit would be vacated, although it does not specify the date it will be vacated; and
- the keys to the rental unit were returned on January 02, 2016 or January 03, 2016.

The Landlord submitted a copy of an Application for Dispute Resolution, dated December 02, 2015, which appears to have been filed by the Tenant. In this Application for Dispute Resolution the Tenant appears to declare that unit #410 is occupied by her son.

Legal Counsel for the Landlord argued that this tenancy should end early because the Tenant continued to act as a building manager after the Landlord ended the employment contract.

The Landlord submitted documents that show the Landlord initiated proceedings in the Supreme Court of British Columbia, in which the Landlord is seeking a variety of Orders, including:

- all keys to the residential complex be delivered to the Landlord, with the exception of keys to units 209 and 410;
- all records, documents, contracts and correspondence relating to the residential complex by delivered to the Landlord;
- all funds and cheques received from tenants of the residential complex that have not already been provided to the Landlord be delivered to the Landlord; and
- the Tenant provide the Landlord with a "full accounting" of funds received and deposited; and
- the Tenant provide the Landlord with a complete list of current tenants which includes various details of their tenancy.

Legal Counsel for the Landlord stated that on December 03, 2015 the Tenant advised the Supreme Court that she would not continue to act as an agent for the Landlord and that, in spite of that assurance, she has collected at least one security deposit.

The Agent for the Landlord stated that the Tenant has erected a wall in the rental unit which he is concerned may be unsafe. The Landlord submitted no evidence to support the Landlord's concern that the wall is unsafe.

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 on the basis of the early end of tenancy.

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 jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

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. Typically tenancies are ended pursuant to section 56 of the *Act* if there is a significant, imminent risk to life or property.

Section 58(2)(3)(c) requires me to determine issues in dispute unless the dispute is linked substantially to a matter that is before the Supreme Court, except as provided in section 58(2)(4) of the *Act*.

The undisputed evidence is that issues related to the Tenant's employment at the residential complex are currently before the Supreme Court of British Columbia. I therefore find that I cannot adjudicate any issue relating to that matter, pursuant to section 58(2)(4) of the *Act.* I specifically note that I cannot make any findings regarding allegations that the Tenant has misappropriated funds, as that is a matter that is before the Supreme Court of British Columbia.

Although I cannot consider the matters before the Supreme Court of British Columbia, I am satisfied that the Landlord has terminated their contract with the Tenant and that she no longer has the right to act as an agent for the Landlord.

Even if I did conclude that the Tenant continued to act as a building manager after her tenancy was ended and that by doing so the Tenant was seriously jeopardizing a lawful right or interest of the landlord, which are grounds to end the tenancy pursuant to sections 47(1)(d)(ii) and 56(2)((a)(ii) of the *Act,* I find that the Landlord has submitted insufficient evidence to establish that 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.

In determining that it there is insufficient evidence to establish that it would be unreasonable or unfair to wait for a notice to end the tenancy under section 47 to take effect, I was heavily influenced by the undisputed evidence that shows the Landlord has already informed all occupants of the residential complex that the Tenant was no longer the resident manager. I find that this action can reasonably be expected to protect the Landlord from further losses.

In determining that it there is insufficient evidence to establish that it would be unreasonable or unfair to wait for a notice to end the tenancy under section 47 to take

effect, I was heavily influenced by the undisputed evidence that shows a hearing has been scheduled for January 27, 2016 to determine the merits of a One Month Notice that has been served in accordance with section 47 of the *Act.* I do not find this relatively short delay is not onerous on the Landlord, given the Landlord has taken action to protect itself from potential losses.

I find that the Landlord has submitted no evidence to corroborate the Landlord's concern that a wall erected by the Tenant in the rental unit is unsafe. In reaching this conclusion I was heavily influenced by the absence of evidence from an expert, such as a building inspector or a fire inspector, which establishes the wall poses a significant risk to the occupants of the residential complex. I therefore cannot conclude that the wall poses an immediate risk to the residential complex.

Even if I were to conclude that the wall the Tenant erected was grounds to end the tenancy pursuant to sections 47(1)(f) or 56(2)(a)(v) of the *Act*, I would not grant an early end to the tenancy. Given that an urgent need to remove the wall has not been established, I do not think it would be unreasonable or unfair for the Landlord to simply wait for hearing that has been scheduled for January 27, 2015, at which time the merits of the One Month Notice to End Tenancy that has been served will be considered.

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.

Conclusion

As the Landlord has failed to establish the merit of the Application for Dispute Resolution, I dismiss the application to recover the fee for filing this Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 21, 2016

Residential Tenancy Branch