



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made on December 31, 2015 to end the tenancy early and obtain an Order of Possession.

Both Landlords and the Tenants appeared for the hearing. However, only the male Landlord and the Tenant provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application and documentary evidence and the Landlord confirmed receipt of the Tenant's written submissions.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered the evidence provided by the parties in this case. However, I have only documented that evidence which I relied upon to making findings in this decision.

Issue(s) to be Decided

Have the Landlords met the burden of proof to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The parties agreed that this tenancy for a basement suite in an apartment complex started on May 1, 2011. A written tenancy agreement was signed and rent is payable by the Tenant in the amount of \$650.00 in advance on the last day of each month. The Tenant paid the Landlords a security deposit of \$325.00 on May 6, 2011 which the Landlords still retain.

The Landlord testified that in December 2015 a fire occurred in the tank room of the Tenant's rental unit. As a result, the fire and the resulting water to put the fire out caused extensive smoke and water damage to the rental unit.

The Landlord testified that he contacted the Tenant at the end of December 2015 and asked the Tenant to vacate the rental unit so that the remediation work could take place. In support of this the Landlord provided a letter from a restoration company which states the following:

"Due to the smoke particulate in the unit, we will need to tear out several walls to get provide access to wall cavities to clean these areas. After this, the entire space requires ozone treatment which can be fatal to animals and people, and it must be vacated before treatment can commence.

Repairs will take up to 8 weeks as flooring throughout entire unit needs to be removed and replaced, as well as the entire space will need to be cleaned and painted."

[Reproduced as written]

The Landlord testified that the tenancy needs to end immediately as the water has penetrated the walls, flooring and concrete portions of the rental unit and that the failure of the Tenant to leave after repeated requests is exacerbating the damage. This damage includes the accumulation of mould and mildew in the suite. The Landlord testified that at the end of December 2015 he even offered to house the Tenant while the remediation work could take place, but the Tenant refused. The Landlord testified that the Tenant's refusal to vacate the rental unit is stopping essential work taking place in the rental unit and that the continued effect of mould and mildew will lead to excessive costs in remediation work and further damage to it.

The Landlord was asked how the fire occurred in the rental unit. The Landlord explained that the fire and insurance company were still investigating the matter but they have made a preliminary finding that it may have been arson by an unknown party at this moment in time. The Landlord provided an extensive amount of evidence prior to the hearing but the majority of this related to unpaid rent throughout this tenancy.

The Tenant summarised his written submissions submitting that he disputes the Landlord's evidence and Application to end the tenancy early. The Tenant explained that he was away from the rental unit at the time the fire occurred and testified that it occurred as a result of a break and enter into the rental unit by parties unknown to him.

The Tenant testified that shortly after the fire occurred, the water in the rental unit was quickly sucked up and there is no water penetration or damage in the rental unit being claimed by the Landlord. The Tenant testified that he has spent a considerable amount of time and energy cleaning the smoke off the walls and there is no penetration of water in the walls; in fact the rental suite is as good as it was when he received it in 2011.

The Tenant testified that because some of the flooring is linoleum and is waterproof it was not compromised. The Tenant acknowledged that there was still some minor damage in the rental unit but this was not sufficient to end the tenancy. The Tenant testified he had received the offer from the Landlord to house him temporarily but he could not move because he has cats which are not able to reside there.

The Tenant explained that he had offered multiple opportunities for the Landlord to come and look at the rental unit and see for himself that there is no water damage. The Tenant testified that there is no smell or odor of mould and no warping of the walls and that the Landlord is panicking to get work done to his rental unit which is not required.

The Landlord rebutted the Tenant's evidence stating that the Tenant has no professional capacity to determine the existence of water damage in the rental unit. The Landlord explained that the restoration company had used proper tools to clearly identify that restoration work is required. When the Landlord was asked about what evidence he had that there was extensive water damage to the rental unit that was causing mould, the Landlord explained that the fire services and his insurance company had gathered evidence such as photographs but he could not make these available prior to this hearing as the investigation and insurance claim is still ongoing.

Analysis

An early end of tenancy is an expedited and unusual remedy under Section 56 of the Act. An Application for an early end of tenancy requires the Landlord to meet the strict burden to prove the Application with sufficient evidence to justify the ending of the tenancy early without having to give the appropriate notice under the Act. As a result, I turn my mind to the Landlord's evidence in making my findings.

In this case, I find the parties are in dispute as to the current state of the rental unit. The Tenant claims that there is no existence of water damage that is compromising the rental unit and it is not sufficient to end his tenancy early. The Landlord relies on his submission that if the Tenant does not vacate the rental unit immediately, the mould growth will increase his costs and cause further damage to the rental unit.

As a result, I turn my mind to the Landlords' evidence. I find the Landlord has failed to provide sufficient evidence to show that there is extensive water damage in the walls, ceilings and floor of the rental unit. Having examined the Landlord's documentary evidence provided prior to this hearing, the majority of this comprises of material relating to payment of rent and utilities which is not relevant to the matter applied for by the Landlord. The only relevant evidence I find the Landlord has provided to support his Application is the letter from the restoration services.

In analysing this letter, I find this evidence only informs that there is smoke damage to the walls of the rental unit and that the remediation work requires that the Tenant to vacate the rental unit. I find the letter does not provide sufficient information to the consequences if the work is not carried out. I also find that there is insufficient evidence in this letter which proves water damage and mould in the rental unit and that a delay in dealing with it will cause further damage or loss to the Landlords.

The Tenant disputed the Landlord's evidence that there is water and smoke damage in the rental unit. While it may have been prudent for the Tenant to provide supporting evidence of this, such as photographs or videos, the same requirement applies to the Landlords as they bear the burden to prove the claim. I find the Landlord provided insufficient evidence to corroborate the extent of the repairs and the consequences of a delay in not getting them remediated. This evidence would have been best presented in the material collected by the fire and insurance company which the Landlord referenced during the hearing. However, this was not made available for this hearing. Without such evidence, I am unable to find that this tenancy should end early.

Conclusion

The Landlords' Application is dismissed because they have not met the burden of proof that the tenancy should end early.

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: February 02, 2016

Residential Tenancy Branch

