Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application filed July 25, 2017 under the *Residential Tenancy Act* (the "*Act*") seeking an order of possession to end the tenancy early and to recover the cost of the filing fee.

The landlord and her partner attended the teleconference hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As the tenants did not attend the hearing, service of the landlord's application and notice of hearing was considered. The landlord provided affirmed testimony that she sent these materials, along with supporting documentary evidence, by registered mail on August 3, 2017. The landlord provided two registered mail tracking numbers in support and confirmed that the registered mail was sent to the rental unit address where the tenants are still residing. The landlord further advised that the registered mail had not been claimed. I find that the tenants were duly served with the application and notice of hearing on August 8, 2017, five days after the registered mail was posted, in accordance with s. 90 of the Act. Refusal to accept service does not override the deeming provisions of the Act, and is not grounds for review under the Act.

Issue to be Decided

Is the landlord entitled to end the tenancy early and obtain an order of possession under section 56 of the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. This was a fixed term tenancy beginning November 1, 2016 and expiring October 31, 2017. Monthly rent of $2,100.00 is due on the first day of each month. The tenants paid a security deposit of $1,050.00 and a pet deposit of $250.00 at the start of the tenancy and these remain in the landlord's possession.

An addendum to the tenancy agreement advises the tenants to carry their own insurance. The landlord testified that the tenants told her that they had insurance at the beginning of the tenancy.

The landlord testified that there was a significant flood in the rental unit on or about June 1, 2017. It occurred as a result of the tenants' locking their dogs in the bathroom while they were away, and the dog's plugging the drain with kibbles and then knocking the water tap on.

The landlord was advised of the flood by neighbours and immediately attended at the rental unit. She said that when she arrived water was flowing off of the balcony of the town home and coming out of the light fixtures. She arranged for a restoration company to attend, and filed a claim with her insurance company.

An emergency water extraction was carried out by the restoration company. Carpets and flooring on the two affected levels were removed and the subfloor was exposed. Commercial fans were brought in to attempt to dry the unit. Thick plastic was applied to the subfloors and fasted down with small tacks. The bathroom and the kitchen are both on the main floor and were both affected. Many of the tenants' belongings were moved into a garage.

The tenants returned home and apologized for the flood. They revealed that they did not actually have insurance and were unable to afford the costs of temporarily relocating, including the costs of moving and storing their belongings. They do not wish to relocate in order to allow the necessary repairs to be carried out. The landlord understands them to be saying that the repairs can be accomplished while they are residing in the rental space.

However, the landlord stated that the restoration company will not continue the repair work unless the unit is vacant. The basement level drywall and ceilings have to be removed and replaced. The landlord submitted a letter dated July 20, 2017 from her

insurance company estimating the repairs, and an email dated July 25, 2017 from the restoration company stating:

> We would like to start scheduling the repairs to your home as soon as it is available. The repairs to the kitchen/living room, garage and lower level will require that all contents be removed.
>
> We will need it to be vacant for the duration of the repairs as the lower level will be sealed off for drywall replacement and painting.
>
> The living level will need the subfloor replaced in the kitchen and living room. The kitchen will not be usable. Main level bathrooms will also be out of use for flooring replacement.

The landlord advised that the main entrance is on the lower level.

The landlord further testified that she has been advised that allowing the tenants to remain in the rental unit while the repairs are completed would be risking their safety.

Additionally, the tenants are now complaining about health and safety risks associated with residing in a "construction zone." The landlord testified that the tenants have advised that there appears to be mold growing underneath the plastic covering the subfloors. The landlord has sent the restoration company attend to investigate the concern the date of this hearing.

The tenants have also asked the landlord to have a toilet that was removed during remediation efforts reinstalled for their use. Again, the landlord has complied, but has incurred an additional expense in doing so, as the toilet will have to be removed and reinstalled again for the installation of the new floors.

The tenants have complained that the plastic covering the subflooring is slippery and that the small tacks affixing the plastic to the subfloor have injured their dogs' paws. The landlord has had her contractor attend to reaffix the plastic over the subfloor.

The landlord submitted that the tenants are obstructing necessary repair work by refusing to vacate. The landlord also stated that timely repair is necessarily to avoid the growth of mold. The landlord also asserted that by remaining in the rental unit the tenants are risking their own health and safety while at the same time holding her responsible for the substandard conditions.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause on by posting it on the door of the rental unit on June 30, 2017. She testified that the tenants appeared to be at home and were texting with her at the time she was at the rental property, but that they would not open the front door. The tenants filed an application to dispute the 1 Month Notice on July 10, 2017. Both the 1 Month Notice and the tenant's application were in evidence. The landlord advised that the hearing of that dispute is set for September 25, 2017. The file numbers for the September 25 hearing as given to me by the landlord are reproduced on the cover page of this decision.

Analysis

Based on the landlord's undisputed documentary evidence and her unopposed testimony, and on a balance of probabilities, I find that the tenants have caused extraordinary damage to the property and, by refusing to relocate to allow the repairs, have also put the landlord's property at significant risk.

I am also satisfied that it would be unreasonable and unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act. Although the 1 Month Notice issued by the landlord has an effective date of July 31, 2017, the hearing of that matter is not until September 25, 2017.

The landlord has provided undisputed testimony at this hearing. I accept her evidence that the unit must be temporarily vacant in order to be repaired. I also accept that by delaying the repairs further the tenants are significantly increasing the potential for mold growth. By refusing to relocate the tenants are also risking their own health and safety and at the same time creating a liability risk for the landlord. Additionally, by requiring the landlord to address their concerns with living in a construction zone (their concerns about potential mold, the temporary plastic covering the subfloors, the uninstalled toilet, etc.) the tenants are requiring the landlord to incur costs that she would not have to incur. All of this makes it unreasonable and unfair to require the landlord to wait until September 25, 2017 to attempt to end the tenancy.

Therefore, pursuant to section 56 of the Act, I grant the landlord an order of possession for the rental unit effective not later than **two (2) days** after service of the order on the tenants. This order may be enforced through the Supreme Court of British Columbia.

As the landlord's application is successful, I grant the landlord application filing fee in the amount of **$100.00.** I authorize the landlord to retain $100.00 pursuant to section 72

of the Act from the tenants' $1,050.00 security deposit in full satisfaction of this amount. The tenants' security deposit is now $950.00 accordingly.

Conclusion

The landlord's application is successful.

The tenancy ends two days after service of the order of possession on the tenants. The tenants must vacate the rental unit accordingly and if they fail to do so, the landlord is at liberty to enforce the order of possession through the Supreme Court.

The landlord has been authorized to retain $100.00 from the tenants' security deposit in full satisfaction of the landlord's recovery of the $100.00 filing fee. The tenants' security deposit is now $950.00 as a result.

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. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: August 24, 2017

Residential Tenancy Branch