



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding McLaren Housing Society of BC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET

Introduction

This hearing was convened in response to an application by the Landlord for an early end to the tenancy and an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the "Act"). The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. Both Parties acknowledged receipt of the other Party's evidence and were prepared.

Issue(s) to be Decided

Is the Landlord entitled to an early end of tenancy?

Background and Evidence

The tenancy under written agreement started on September 1, 2013. Rent of \$375.00 is payable on the first day of each month.

The Landlord states that it is seeking an early end of the tenancy due to extraordinary damage to the rental unit and serious jeopardy to the safety of the landlord or another occupant.

The Landlord states that evidence of extraordinary damage is contained in photos provided for this hearing that were taken in February and April 2019. The Landlord agrees that the Tenant's photos provided as evidence for this hearing were taken recently. The Landlord agrees that no recent photos were taken by the Landlord. The

Landlord states that it does not know if the unit is in different or worse shape than depicted in the earlier photos. The Landlord states that repair persons who were in the unit in July 2019 refused to return to the unit to complete final repairs due to the state of the unit. The Landlord provides a letter from these repair persons dated July 29, 2019. It is noted that this letter refers to bad smells in the unit and that after airing out the work was able to be done but was not completed. It is noted that the letter also states that if the unit is in the same shape when they return the work will not be able to be completed. The Landlord states that it is unsure when the final repairs were to be completed after the initial repairs and states that the repair persons would not return. The Landlord states that the repairs remaining from July 2019 will be completed after the unit was empty.

The Landlord states that in April 2019 the unit was very bad and verging on a biohazard” but that no action was taken by the Landlord at this time as the Landlord wanted to support the Tenant in cleaning the unit. The Landlord states that it is unknown if the unit became worse than it was in April 2019. The Landlord states that it believes the unit was worse as in August 7, 2019 the Landlord’s maintenance person attended the unit in relation to a leak but could not enter the unit due to an odor. The Landlord states that even if the unit is no longer in the same state as it was in April 2019 it is still pursuing the end of the tenancy as it believes that the state is only temporary and that there are issues with the damage to the floors that will require removal. The Landlord states that the maintenance person provided an incident report dated August 7, 2019 in which it states that the floors were damp, with cat feces and odor and that the unit was a biohazard. The Landlord states that after this report the Landlord did nothing until it made its application. The Landlord states that it likely should have served the Tenant with a one month notice to end tenancy for cause instead of seeking the early end of tenancy with this current application. The Landlord states that the extraordinary damage in is relation to the level of excrement shown in the April 2019 photos. The Landlord confirms that no photos of the unit have been taken by the Landlord since that date.

The Landlord states that in an email dated August 26, 2019 and not provided for this dispute, the building manager states that they tried to access the unit however there was still an ammonia smell from the cat feces. The Landlord states that the email sets out that the unit remains immensely dirty and that the excessive cat smell is a definite health hazard. The Landlord states that no ill effects have been reported by anyone who has been in the unit.

The Tenant states that the unit is not a biohazard. The Advocate submits that the Landlord has not provided supporting evidence of a biohazard and is merely making a speculation. The Tenant states that the photos provided for this hearing by the Tenant were taken recently and are evidence of the state of the unit since early July 2019 when the repair persons attended. The Tenant states that it was informed on August 7, 2019 that persons would be in the unit on August 8, 2019 and that the unit was clean for that date. The Tenant states that nobody appeared and that the Tenant was informed a couple of days later that staff would not attend the unit. The Tenant states that the Landlord last entered the unit on August 26, 2019 and that the unit was in the same state as shown in the Tenant's photos. The Tenant states that the staff did not wear masks for that entry and had no issue with any smell. The Tenant states that there is sometimes a smell from the litter.

Analysis

Section 56(2) of the Act provides that an order may be made specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application, the tenant or a person permitted on the residential property by the tenant has, inter alia, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or caused extraordinary damage to the residential property, and, 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 [*landlord's notice: cause*] to take effect.

The above section provides an extraordinary remedy that is reserved for situations in which there is a clear and present danger, or a genuine threat of imminent harm of such an extreme nature that it would warrant immediate intervention and removal of the tenant.

Although the photos provided by the Landlord to substantiate the Notice do not show a unit in reasonable shape, these photos were taken in February and March 2019. The Landlord's evidence is that it did not raise the issue of the state of the unit until August 15, 2019, more than a month after the entry by the repair persons in July 2019. This lack of action does not support that the unit presented serious jeopardy to the staff. There is no evidence of any protective measures being taken by staff or repair persons who entered the unit between March and August 2019. Further the evidence of the repair persons in the unit indicates that it was only a smell that caused a delay as the unit had to be aired out and that the repair persons were able to work in that unit. There is no evidence to support that the unit is a "bio-hazard" or a health hazard and I consider these descriptions to be mere speculation. The Landlord provided no evidence that the unit became worse since March 2019 and the Tenant provides current photos of a unit in a reasonably good state. The Landlord's photos are too old to substantiate that any part of the unit was unsafe to anyone at the time the Notice was served. For these reasons I find that the Landlord has not substantiated that any serious jeopardy to the safety of the staff existed at the time of the application to end this tenancy due to an emergency or urgent situation.

The photos taken by the Landlord from February and March 2019 are also used by the Landlord to substantiate extraordinary damage and the Landlord gives evidence of the unit being in deplorable condition. While the photos tend to support that description, the Landlord took no action following the taking of these photos to evict the Tenant. The evidence of damage to the flooring from cat urine and feces is not, on its own, evidence of extraordinary damage. There is no evidence that this damage has or will cause structural damage or any other extraordinary damage to the unit or building or property.

For these reasons and given the Tenant's photo evidence of the current state of the unit, along with the Tenant's evidence that the unit has been in a good state for some time, I find that the Landlord has not substantiated that the Tenant caused any extraordinary damage.

Finally given the evidence of inaction since the photos of March 2019 and as there is no evidence to support that the unit became worse, I find that the Landlord has not substantiated 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 [*landlord's notice: cause*] to take effect.

For the above reasons I find that the Landlord is not entitled to an early end of the tenancy and I dismiss the claim for an early end of tenancy and an order of possession. The tenancy continues.

Conclusion

The Landlord's application is dismissed.

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: September 27, 2019

Residential Tenancy Branch