Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- An early end to the tenancy due to frustration of the tenancy, pursuant to section 56.1, and
- Recovery of the $100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, the Landlord's Agent (the "Agent") and the Tenant, all of whom provided affirmed testimony. The Tenant confirmed receipt to the Application, notice of the hearing, and the Landlord's documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 56.1 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The parties agreed that there was a sewer backup into the basement suite where the Tenant rents a room, on March 2, 2020, necessitating the removal of flooring and the

bottom three feet of drywall throughout all or the majority of the suite, as well as the removal of the toilet and the bathroom sink. They also agreed that remediation in terms of an antimicrobial wash was required, as well as the repair and replacement of the flooring, drywall, and the bathroom fixtures, which has yet to be completed. The parties were in agreement that the Tenant has not vacated the room they rent in the basement suite, and that as a result, most of the flooring and drywall in the Tenant's room has not been remediated. There was agreement that the remainder of the basement suite has had the flooring and the lower three feet of drywall removed and has been treated with an antimicrobial wash.

The Landlord and Agent argued that the tenancy has been frustrated as a result of the sewer backup and that the Tenant can no longer reside in the rental unit as it is not safe for them to do so, it is not suitable for habitation, and because the contractor approved by the insurance company requires the Tenant to vacate the rental unit before the remaining remediation and repair work can be completed. The Landlord and Agent stated that the insurance company also requires that the rental unit be vacated, and the remaining remediation and repairs be completed immediately, as any further delays could result in secondary microbial growth and damage for which the insurance company will not be responsible.

The Tenant disagreed that the rental unit needs to be vacated, stating that there is a functional kitchen and sink and an outhouse on the property. The Tenant also stated that they are immunocompromised and that it would be unsafe for them to move during the current state of emergency. Further to this, the Tenant stated that they have nowhere to go.

The parties agreed that the Landlord made attempts to help the Tenant secure alternate accommodation through friends and family and other community housing organizations but that the Tenant was ultimately unsuccessful in securing alternate accommodation. The Landlord also stated that they made a proposal for the Tenant to occupy the second room in the basement suite while their room was remediated, but that the Tenant had found this option unsuitable as that room currently has no carpet and the lower 3 feet of drywall is missing. The Landlord and Agent stated that this is no longer an option as the company approved to do the remediation work by the Landlord's insurance provider is now refusing to enter the rental unit or complete the work while the Tenant or their possessions are present due to harassment and threats by the Tenant.

The Tenant denied harassing the contractor but agreed that they have been angry and frustrated as they only want to be safe and maintain their housing. The Tenant stated

that the other room was ands is not a suitable alternative as they have dogs, who would not be safe in a construction environment without complete walls. The Tenant also disputed that their room required remediation, stating that it is furthest from where the sewer backup occurred and that only a small portion of their carpet was affected, which has already been removed and the floor underneath treated with an antimicrobial wash.

The Landlord and Agent stated that the cause of the sewer backup into the rental unit was a root entanglement in the sewer lines on city property and therefore the cause was not due to the fault of the Landlord or Tenant, nor was it due to negligence on the part of the Landlord. The Landlord further stated that they had the sewer lines on their property replaced seven years ago from where they connect to the house to where they connect on city property. The Tenant did not dispute this testimony.

The Landlord and Agent also pointed to a frustrated tenancy agreement signed by the Tenant wherein the Tenant agreed to vacate the rental unit168 hours later due to frustration of the tenancy, which would have been on March 26, 2020. However, in the hearing the parties agreed that the Tenant did not vacate the rental unit in compliance with this agreement.

Ultimately the Landlord sought to end the tenancy pursuant to section 56.1 of the *Act* as they believe that the rental unit is uninhabitable, and that the tenancy is frustrated as a result of the sewer backup and the subsequent remediation required.

Analysis

Residential Tenancy Policy Guideline (the “Policy Guideline”) #34 states that a contract is frustrated where, due to no fault from either party, a contract can no longer be fulfilled because an unforeseeable event has changed the circumstances such that fulfillment as originally intended is not possible. As a result, the parties are discharged or relieved from fulfilling their obligations under the contract. Further to this, Policy Guideline #34 states that a party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

Policy Guideline #34 states that “the change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Consequently, mere hardship, economic or otherwise, is not sufficient grounds for finding a contract has been frustrated so long as the contract could still be fulfilled according to its terms.

The Landlord and Agent stated that the cause of the sewer backup was a root entanglement in the sewer lines on city property and that they had the sewer lines on their property replaced seven years ago. As a result, they argued that the cause of the flood was neither the fault of the Landlord or the Tenant, nor was it due to negligence on the part of the Landlord. As the Tenant did not dispute this testimony and there is no evidence before me to the contrary, I accept that the flood was not the result of any actions or negligence on the part of the Landlord who is claiming frustration in this matter.

Although the Tenant argued that the rental unit remains habitable, I do not agree. The parties agreed in the hearing that there is no floor or washroom, and that the bottom 3 feet of drywall is missing. Although the Tenant stated that there is an outhouse on the property, there is no evidence before me that this outhouse is part of the Tenant's tenancy agreement, and as a result, I am not satisfied that the Tenant is entitled to use it as part of their tenancy agreement. There is also no shower or other means of bathing in the rental unit. As a result, I am not satisfied that the tenancy agreement could still be fulfilled according to its terms.

Although the Tenant stated that their room does not require remediation, I am not satisfied based on the nature of the flood, which was a sewer backup, and the documentary evidence provided by the Landlord that this is the case. As a result, I find that occupancy of the room or any portion of the basement suite is no longer an option, both for the health and safety of the Tenant and preservation of the Landlord's property. Further to this, the parties agreed that restoration of the property is still required, and the documentary evidence provided by the Landlord demonstrates to my satisfaction that vacant occupancy of the property is required in order for the necessary remediation and repairs to be completed by the Landlord's insurance company.

Based on the above, the Landlord has satisfied me on a balance of probabilities that they are entitled to end the tenancy pursuant to section 56.1 of the *Act* because the rental unit is uninhabitable, and the tenancy has been frustrated by a sewer backup that occurred on March 2, 2020, and the resulting remediation required.

As a result of the above, and given the serious jeopardy the Landlord's property is facing without proper and timely remediation, I find that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant.**

As the Landlord was successful in their Application, I also award them a Monetary Order in the amount of $100.00 for recovery of the filing fee pursuant to sections 67 and

72 of the *Act*. In lieu of serving and enforcing this order, the Landlord is entitled to retain $100.00 from any security or pet damage deposit paid by the Tenant, should they wish to do so.

Conclusion

Pursuant to section 56.1 (2) of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of $100.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this order, the Landlord is entitled to retain $100.00 from any security or pet damage deposit paid by the Tenant, should they wish to do so.

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: May 5, 2020

Residential Tenancy Branch