



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Macroreal Investment Corp. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

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(2) of the *Residential Tenancy Act* (the “Act”).

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by posting the Materials on the door on May 27, 2020 in accordance with section 89(2) of the Act. The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early and obtain an order of possession?

Background and Evidence

The tenancy under written agreement started on January 1, 2019. Rent of \$725.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$362.50 as a security deposit.

On May 7, 2020 the Landlord went to the unit to make repairs to a broken window that the Tenant had been using for entry and exit from the unit. On this date the Landlord discovered that the walls of the unit had several holes ranging in size from inches to

feet. The holes exposed electrical wiring and water pipes. The Landlord obtained an in house estimate of \$5,000.00 for repair costs and states that a commercial repair would have been much greater. The Landlord provides photos of the walls and argues that this depicts extraordinary damage. The Landlord also argues that the exposed electrical wiring and water pipes puts the property, the Tenant and other tenants at significant risk of fire and water damage.

The Landlord has not communicated with the Tenant at all about the damages to the window or the walls as it has not been on site and there is no phone or email contact for the Tenant. The Landlord does not know why the Tenant was using the window to enter and leave the unit. The Landlord has never met the Tenant and has no evidence of the Tenant's behavior other than the damages. The Tenant was given keys at the outset of the tenancy. The Landlord has not attempted to make repairs to the unit. The Landlord would have served the Tenant with a one month notice to end tenancy for cause for this damage if it were not for the Ministerial Order restricting the service of this type of notice during the state of emergency.

The Landlord argues that in this situation and given the damage to the walls the Landlord should be entitled to end the tenancy early and without the one-month notice. The Landlord believes that given the extent of the damage to the walls the Tenant will likely cause greater damage if they have to wait to serve a one-month notice. The Landlord argues that it is not required to speak to a tenant prior to making an emergency application and that the Tenant has chosen not to attend the hearing or provide any evidence to rebut the Landlord's evidence. The Landlord argues that repairs cannot be made without the Tenant's consent during the state of emergency. The Landlord argues that it would also be unfair to wait for the Ministerial Order to expire or be cancelled as this is an unknown factor.

The Landlord confirms that the Act does not allow an early end to tenancy for additional or unauthorized occupants. The Tenant has also been the subject of complaints about

noise, the number of occupants, the dozens of visitors to the unit and the Tenant or its guests knocking on other tenant's doors. The Landlord has not provided copies of any written complaints made by other tenants.

Analysis

Section 56(2) of the Act provides that the director may make an order 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,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) 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, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) 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.

Section 8(3)(b) of the *Residential Tenancy (COVID-19) Order*, MO 89/2020 (*Emergency Program Act*) issued March 30, 2020 (the "Ministerial Order") provides that despite any section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy

agreement if the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public. Noting that there is nothing in the Ministerial Order that prevents the Landlord from entering a building for emergency repairs during the state of emergency and given the Landlord's evidence that no attempt has been made to repair and cover the electrical wiring or water pipes to ensure the safety of its property and others in the building, I find that the Landlord has not substantiated that the Tenant caused a significant risk to the property or others. Given the Landlord's evidence that under normal circumstances it would have served the Tenant with a notice to end tenancy for cause for the Tenant's actions and given the lack of any evidence from other tenants of any type of emergency in relation to the Tenant's or its guest's actions, I also find that the Landlord has not substantiated any unreasonable disturbance or significant interference or that it could not wait to issue a notice to end tenancy for cause in relation to any unreasonable disturbance or significant interference with other occupants.

Given the undisputed evidence, including photos, of the extent of damage to the walls and the costs to repair the damage that would be significantly more than \$5,000.00 if done by a commercial repair, accepting the Landlord's undisputed evidence that given the extent of damage to the walls there is a likelihood that further damage will occur if the tenancy is ended, and considering that it cannot be determined how long it may be before the Ministerial Order is lifted enabling the Landlord to end the tenancy with a one month notice, I find that the Landlord has substantiated an early end to the tenancy due to extraordinary damage to the unit. I therefore order that the tenancy is ended, and I grant the Landlord an order of possession that is effective two days after being served on the Tenant.

As the Landlord's claim for an order of possession has been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee and the Landlord may this amount from the security deposit plus zero interest of \$362.50 in full satisfaction of this claim.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: June 15, 2020

Residential Tenancy Branch