



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 02, 2020 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

J.S. appeared at the hearing for the Landlord. The Tenant appeared at the hearing with J.T. to assist. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed receipt of the hearing package and Landlord’s evidence. The Tenant had submitted a written statement. The Tenant advised that this was not sent to the Landlord. Given the written statement was not served on the Landlord in accordance with the Rules of Procedure (the “Rules”), I told the Tenant I would not rely on it as evidence but that she could make whatever verbal submissions she wished during the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between a previous owner of the rental unit and the Tenant. It relates to a different unit in the building. The Tenant testified that she moved units around 10 years ago. The tenancy started December 15, 2007 and is a month-to-month tenancy. The parties agreed rent is currently \$479.00 per month due on the first day of each month.

J.S. submitted that the Tenant has done the following:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- Put the landlord's property at significant risk; and
- Caused extraordinary damage to the residential property.

J.S. testified about three main issues being a flood in the rental unit, the condition of the rental unit which is full of possessions and a pest issue in the rental unit.

J.S. testified as follows in relation to the flood. On June 02, 2020, the Landlord's maintenance team responded to a call about a water leak from the rental unit. The maintenance team found the unit full of possessions as shown in the photos submitted. The tub in the unit had overflowed causing a significant flood. The water ran for eight hours before the flood was reported to maintenance. The unit had to be cleared to deal with the flood. The unit requires extensive remediation work throughout due to the flood. The flood and saturation of possessions caused a safety concern in relation to structural damage due to the amount of possessions in the unit. The unit is not habitable and will not be habitable until the remediation work is complete.

J.S. submitted that this is an urgent situation because of the urgency of the Landlord needing to clear the unit and do repairs. J.S. testified that, at this point, the unit has been cleared and is empty. J.S. testified that the flooring in the unit will have to be removed and replaced, the cabinets will have to be removed and replaced, drywall will

have to be removed and replaced and the insulation will have to be checked to see if further work is needed in relation to this. J.S. testified that none of this work has been done yet as the Landlord is waiting for quotes for the restoration work. J.S. testified that he does not know how long the work will take.

The only evidence the Landlord submitted, other than the tenancy agreement, were three photos of the rental unit showing the amount of possessions in it.

The Tenant testified as follows. She mistakenly left the water running in the tub and there was no overflow to catch it. She turned the water on and left it. She then fell asleep. The tub overflowed while she was sleeping. She woke up to a knock on her door. At that point, the rental unit had flooded including the living room, bedroom, bathroom and kitchen. She wiped up the water in the bathroom and kitchen with towels. The water had gone down into the maintenance team's area flooding the ceiling and causing a puddle on the floor.

The Tenant testified that she was escorted out of the rental unit within 20 minutes of the flood being found and that the Landlord changed the locks to the rental unit immediately. The Tenant testified that she has not had an opportunity to attend the rental unit and deal with her possession since.

In reply, J.S. testified that he was not aware of the Landlord changing the locks to the rental unit. J.S. had testified that the Landlord asked the Tenant to return the keys to the rental unit after the flood.

Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;

4. Engaged in illegal activity...or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

I have concerns about the lack of evidence submitted by the Landlord in this matter. The Landlord submitted three photos of the rental unit. The photos are of poor quality. It is not clear what the photos show. The photos do not show the flood or the state of the rental unit due to the flood. The Landlord did not submit witness statements from their maintenance team or from employees of the restoration company. The Landlord did not submit evidence to support J.S.'s testimony about the remediation work that needs to be done in the rental unit. This is the basic type of evidence I would expect from the Landlord on this type of application.

However, I am satisfied there was a significant flood in the rental unit because of the Tenant's testimony on this point. The Tenant testified that the living room, bedroom, bathroom and kitchen were flooded. The Tenant testified that the water had seeped down into the maintenance area flooding the ceiling and causing a puddle on the floor. Given the Tenant's testimony, I am satisfied the flood was extensive. Given the extent of the flood, I am satisfied it caused extensive damage to the rental unit as this accords with common sense. Given the extent of the flood, I am satisfied that the restoration work described by J.S. is necessary.

I am satisfied the Tenant caused the flood as the Tenant acknowledged she left the water running and fell asleep. To be clear, I do not find that the Tenant did this on purpose. I accept that this was a mistake. However, I do find that the flood was caused by the actions of the Tenant versus a maintenance issue or some similar issue.

Considering the extent of the flood, and my findings about damage and the necessary remediation work, I am satisfied the Tenant caused extraordinary damage to the rental unit, and possibly to the maintenance area.

I am satisfied this is an urgent situation. I am satisfied the Landlord had to address the flood immediately, not only to deal with the flood but to prevent further damage. Based

on the photos, I am satisfied there were numerous possessions in the rental unit that had to be removed to properly deal with the flood and to do the restoration work. Again, I am satisfied the possession had to be removed from the rental unit immediately.

I accept J.S.'s testimony that the restoration work has not yet been done. The Tenant did not dispute this. Given this, I am satisfied the rental unit is not currently habitable. I am also satisfied the rental unit will not be habitable while the restoration work is being done given the extent of the work. J.S. did not know how long the restoration work would take. This is information J.S. should have had and the Landlord should have provided documentary evidence of. However, I am satisfied the rental unit has been uninhabitable since the flood and will continue to be uninhabitable for a period of time moving forward.

In the circumstances, I am satisfied it would be unreasonable to require the Landlord to deal with this issue through a One Month Notice issued under section 47 of the *Act*. I find this in large part because the Tenant cannot currently live in the rental unit in any event. Nor would the Tenant be able to live in the rental unit until the restoration work is done.

Given the above, I am satisfied the Landlord has met their onus to prove the tenancy should end under section 56 of the *Act* based on the flood. J.S. sought an Order of Possession effective two days after service on the Tenant. I issue the Landlord an Order of Possession for the rental unit which is effective two days after service on the Tenant.

I do note the following. J.S. testified that the Landlord asked the Tenant for the keys to the rental unit back after the flood. The Tenant testified that the Landlord changed the locks to the rental unit. In my view, the Landlord effectively ended this tenancy already, without authority under the *Act* to do so and contrary to the *Act*. In my view, this is the case whether the Landlord asked for the keys back or changed the locks as asking for the keys back is asking the Tenant to give up possession of the rental unit. In my view, the Landlord had no authority to do this and should not have done this. However, the issue before me is whether the Landlord is now entitled to an Order of Possession pursuant to section 56 of the *Act* and I am satisfied that the Landlord, at this point, is entitled to an Order of Possession pursuant to section 56 of the *Act*. This finding does not change my view that the Landlord effectively ended the tenancy without authority under the *Act* and contrary to the *Act*.

Given the Landlord was successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Landlord is issued a Monetary Order for this amount.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order for \$100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 29, 2020

Residential Tenancy Branch