Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

In this dispute, the landlord seeks an order to end the tenancy, and an order of possession, pursuant to section 56 of the *Residential Tenancy Act* (the "Act"). In addition, the landlord seeks recovery of the filing fee under section 72 of the Act.

The landlord applied for dispute resolution on July 13, 2020 and a dispute resolution hearing was held on July 31, 2020. The landlord, her father, and the tenant attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application. As such, not all of the parties' testimony will be reproduced below; only the relevant testimony will be considered.

Issues

1. Is the landlord entitled to orders under section 56 of the Act?
2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

By way of background, the tenancy started on May 1, 2020. Monthly rent is $1,750.00, due on the first of the month. A security deposit in the amount of $875.00 was paid by the tenant, which is currently held in trust by the landlord. There was a copy of a written tenancy agreement submitted into evidence; however, the digital format was unreadable by my computer and its software. There was no dispute as to the tenancy details.

The issues that gave rise to the landlord filing this application were as follows: (1) the tenant's failure to pay rent, and (2) plumbing issues. As explained to the parties, I would not be addressing the issue of non-payment of rent, as this falls outside the subject matter of section 56 of the Act.

Regarding the plumbing issue, the landlord gave evidence that, allegedly due to the tenant's negligence, a sewer sump pump became inoperable. This inoperability led to a small flooding within the basement rental unit. A plumber was called, and he produced a report (submitted into evidence) which stated, in part:

> [. . .] the sewer sump pump which was broken. I found that there was a piece of rag been sucked into the pump from the bottom, and caused the motor of the pump over heated. The broken pump was replaced with a new one. [. . .]

It is the landlord's contention that the tenant's child must have put something into the sewer system, such as a piece of cloth from a t-shirt.

The landlord argued that due to the water damage, including damage to the drywall, that they will "need to do a bigger renovation" and that "it is not recommended that people live" in the rental unit. In addition, she argued that the tenant's child has immune or respiratory health issues which may be aggravated by the smell from the water damage. Finally, the landlord stated that a tenant is responsible for repairing damage caused to the rental unit.

Several photographs of the bathroom and the knocked-out drywall (to access the plumbing) were submitted into evidence by the landlord.

In her testimony, the tenant described being woken up in the middle of the night on July 8 by the sound of water flowing from the bathroom. She and her husband threw a bunch of clothes down to mitigate the flooding. They cleaned up the water. The landlord and her father came down to the rental unit the next morning, to collect the rent, and the tenant advised them about the water problem.

The tenant testified that she had spoken with an insurance representative who said that, because the rental unit was in a basement suite, the plumbing was below the street-level. This means that the pump has to pump the rental unit sewage upwards to the street. The representative apparently told the tenant that "this will happen again," and that the tenant should find a new place to live. (Apparently, the representative thought that tenants with children should not live in below-street-level basement suites.)

The tenant denied being responsible for whatever material was found by the plumber in the pump, and explained that they only use toilet paper, never cloth, and never paper towels.

She concluded her testimony by explaining that “the house is liveable,” but that repairs will need to be done at some point. Most likely, in several weeks time, if that. Two of the three bedrooms, the living room, one of the bathrooms, and the kitchen are, according to the tenant, “just fine.”

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56(1), I must be satisfied that

(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.

In this case, I do not find that the landlord has proven any of the criteria enumerated in subsections 56(1)(a)(i) through (v). While the tenant, or her child or children, are in fact likely responsible for putting some sort of material down the drain that ended up in the sump pump (indeed, it is a separate plumbing and sewage system, so there can be no other explanation as to how the material got into the pump), I do not find that the damage caused to the floor or the drywall is “extraordinary damage.” Nor is there any evidence that the one broken pump, which has since been fixed, has put the landlord’s property at significant risk.

Moreover, the landlord provided no documentary evidence that the tenant’s child is so at risk – and that the child is at significant risk due to the tenant’s actions – such that the tenancy needs to end under section 56 of the Act. Nor do I find compelling the landlord’s argument that there needs to be major renovations such that the tenant’s entire family needs to vacate the unit. Rather, I find that the landlord is likely using the plumbing issue as leverage to end the tenancy due to the tenant’s failure to pay rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for an order to end the tenancy, and an order of possession, under section 56 of the Act.

In respect of the landlord’s application for recovery of the filing fee, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was not successful in their application, I dismiss her claim for reimbursement of the filing fee.

Conclusion

The landlord's application is dismissed, without leave to reapply.

This decision is final and binding, except where otherwise permitted under the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 31, 2020

Residential Tenancy Branch