



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ewald Rentals (Ewald Enterprise LTD) and [tenant name used to protect privacy]

DECISION

Dispute Codes: CNC, OLC, RP, PSF, FF

Introduction

This hearing dealt with an application by the tenant pursuant to sections 47, 62, 32, 65 and 72 of the *Residential Tenancy Act*. The tenant applied to cancel the notice to end tenancy for cause, for an order directing the landlord to comply with the *Act*, carry out repairs and provide services.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves and had an observer in the room with them. The landlord was represented by their agents and legal counsel.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, I find the tenant has applied for an order for the landlord to comply with the *Act* and for an order for the landlord to make repairs and provide services. As these sections of the tenant's application are unrelated to the main section, which is to cancel the one-month notice, I dismiss these sections of the tenants claim with leave to reapply.

Accordingly, this hearing only dealt with the tenant's application to set aside the notice to end tenancy and for the recovery of the filing fee.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue?

Background and Evidence

The background facts are generally undisputed. The tenancy started on July 01, 2001. The rental unit is located in a housing complex that accommodates 21 rental units. The monthly rent is \$1,101.00 payable on the first of each month.

The landlord described the condition of the rental unit. He stated that the flooring was damaged and covered in dog faeces and urine and the odour filled the unit and the hallway outside. The washroom was extremely dirty and damaged. The landlord stated that other residents complained about the odour in the hallway outside the rental unit. The landlord stated that the unit below developed a leak in the ceiling, and he indicated that it is possible that the pet urine leaked into the unit below.

The tenant stated that he has had a leaky refrigerator since 2011 and the landlord refuses to repair or replace it. The landlord stated that they have attended four prior arbitration hearings and the tenant has made this same complaint at each of the four hearings. The landlord testified that after each hearing, the refrigerator was checked and found to be in good working order. The tenant agreed that he had caused a leak in the unit below when he inadvertently left the kitchen sink tap running with a plastic bag blocking the drain.

The tenant denied all allegations of dog faeces and urine in the apartment and maintained that he kept the apartment very clean. The landlord filed photographs that were taken on February 28 and June 01, 2020 which depict the rental unit in an extremely dirty condition. The flooring is buckling and stripped away in parts and there is dog faeces in multiple areas. The walls and cupboards are infested with flies and ants and the washroom floors are dirty. There is clutter and dirt strewn all over.

The landlord stated that the hardwood floor and sub floor under the dining room table has buckled and some of it is now missing because of the continuous dog feces and urine which has rotted away the floor and the sub floor. The photographs filed by the landlord support his testimony.

The landlord also filed photographs of the unit below with water leaking into cupboards, light fixtures, and into the washroom. A note from the tenant below states that the water that is leaking through his ceiling is dirty and smells bad. This tenant decided to move out as he did not want to expose himself and his family to this ongoing health hazard.

The landlord stated that the odour inside the unit is overpowering and on February 28, 2020 a plumber had to use an industrial grade gas mask to carry out repairs.

The landlord stated that due to the Pandemic he delayed serving the tenant with a notice to end tenancy which he finally did on July 28, 2020. The tenant disputed the notice in a timely manner. The reasons for the notice are:

- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the landlord's property.
- Tenant has not done required repairs of damage to the landlord's property

The tenant responded by denying all allegations. He continued to maintain that the rental unit is clean and that he takes his 14-year-old dog out at least 5 times a day. At first the tenant clearly stated that his dog has never defecated inside the unit but later admitted that the dog may have had an accident inside the rental unit.

Analysis

In order to support the notice to end tenancy, the landlord must prove the reason for the notice to end tenancy. Based on the documentary evidence of the landlord and the verbal testimony of both parties, I find that the tenant has health issues that prevent him from seeing, smelling or admitting to the condition of the rental unit.

The photographs are very graphic and paint a disturbing picture. There is dog faeces in multiple areas, and it is obvious that the flooring is rotting away. The landlord filed an estimate into evidence that indicates that the repairs and restoration of this unit and the ceiling of the unit below will cost around \$45,000 if carried out now.

The documentary evidence filed by the landlord fully supports his verbal testimony regarding the complaints and state of the rental unit and the unit below. Upon careful consideration of the evidence before me I find that the tenant does not recognise the seriousness of the consequences of maintaining the rental unit in such a condition.

I further find that by denying the appalling condition of the unit and continuing to maintain that it is clean, odourless and devoid of dog faeces/urine, the tenant does not intend to improve the condition of the unit as he does not see any need to do so.

Therefore, the tenant and his dog will continue to engage in activity that will adversely affect or jeopardize his own health, safety and physical well-being and that of the other residents of the building. This activity is also likely to cause additional extraordinary damage to the rental unit. Therefore, I uphold the notice to end tenancy.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52. I have determined that the landlord has proven his case and therefore I have upheld the notice to end tenancy. Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy.

Accordingly, I so order. The tenant must be served with the 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.

Since the tenant is unsuccessful in his application for dispute resolution, he must bear the cost of filing the application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by 1:00pm on September 30, 2020.

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: September 11, 2020

Residential Tenancy Branch