Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlord applied for orders under section 56 of the *Residential Tenancy Act* ("Act"). They also applied to recover the cost of the filing fee under section 72 of the Act.

Both parties attended the hearing on February 4, 2021, which was held by teleconference. No issues of service were raised by the parties. The landlord expressed concern that he was unable to upload a video that he took of the rental unit; I am unable to consider evidence that was not uploaded into evidence prior to a hearing.

Issues

1. Is the landlord entitled to orders (1) ending the tenancy, and (2) of possession of the rental unit under section 56 of the Act?
2. Is the landlord entitled to compensation for the cost of the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began anywhere between eleven to thirteen years ago. The landlord in this dispute is essentially acting as agent for the previous landlord (who is the agent's 82-year-old mother). There is no written tenancy agreement.

In respect of why the landlord is seeking to end the tenancy under section 56 of the Act, he testified that the tenant is "not cooperating" and that he is concerned for the safety of his elderly mother. His mother lives in one of the other four rental units that comprise

the residential property. The tenant allegedly leaves the common area of the laundry room (which is through where the tenant accesses the rental unit) unlocked. Theft could occur, and the tenant “never locks it.” The landlord is exasperated and wants the tenant to lock the door.

Further, the tenant has apparently not been home in two weeks and the landlord cannot access the rental unit in order for tradespersons to come in. He has no copy of the key to the rental unit, as the tenant has changed the deadbolt to his rental unit. The landlord was able to gain entry at one point, and took photographs of damage to the ceiling, and there is a removed closet door and a piece of drywall that has been cut.

In addition, the landlord testified that there is something wrong with the electrical, and there is an electrical outlet that has been punched in. There is a concern that bare wires inside the wall might cause a spark and result in fire. Another concern is that the tenant has strung incandescent (as opposed to LED) Christmas lights all around the rental unit, and the bulbs are up next to the wall. Finally, he mentioned other issues such as coffee stains, yellowed curtains from smoke, and the fact that the tenant smokes inside what is a smoke-free property.

In support of this application the landlord submitted seven photographs of the interior of the rental units. The photographs depict some damage to the walls and ceiling. There are, I note, no photographs of the electrical panel to which the landlord referred.

The tenant gave extensive testimony regarding electrical issues within the entire property. He adamantly maintained that in the dozen or so years that he has lived in the rental unit he has never created any of the risks of which the landlord speaks. He referred to the landlord’s testimony as “paranoid” and characterized much of it as hyperbole. While he acknowledged that he had changed the deadbolt to his own rental unit, he explained that he did so for personal safety reasons. And, he testified that he has “no problem” permitting tradespersons into the rental unit.

During what would ordinarily be the rebuttal phase of the hearing, both parties began repeatedly interrupting each other, and began calling each other liars. Despite my repeated requests that they cease this conduct, they appeared unable to do so, and so I ended the hearing. I then briefly explained what they could expect next in terms of when they would be receiving this Decision.

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 […]

In this case, while I would not go so far as to call the landlord’s testimony hyperbole, the argument that the tenant has somehow created a fire risk is not proven in evidence. There were no photographs of the alleged bare wire electrical panel, and no corroborating evidence for me to find that the tenant has done anything that has put the landlord’s property at significant risk. Regarding the tenant’s alleged conduct in leaving the laundry area unlocked, the tenant denies this, and there is no supporting evidence

from the landlord for me to find that the tenant has done anything (insofar as not locking doors) that seriously jeopardized other occupants' safety. Finally, while the landlord's photographs depict damaged walls and ceilings, there is no evidence that the tenant caused this damage. Photographs or a condition inspection report completed at the start of the tenancy would provide proof that the tenant caused this damage. And, if the tenant did cause the damage shown in the photographs, I am not persuaded that it rises to that of "extraordinary" damage.

In summary, after carefully considering all of the oral 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 a ground on which I may grant orders under section 56 of the Act. I therefore dismiss the landlord's application without leave to reapply. The claim for recovery of the application filing fee is subsequently dismissed without leave to reapply.

Note 1: the landlord had questions regarding posting notices to enter the rental unit. He may wish to review section 29 of the Act, which is located at: www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02078_01#section29/

Note 2: the tenant ought to be aware that he is prohibited from changing the lock to his rental unit without the written permission of the landlord (see section 31(3) of the Act).

Conclusion

I dismiss the landlord's application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 4, 2021

Residential Tenancy Branch