Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlord filed an Application for Dispute Resolution on March 1, 2021 seeking an order for early termination of the tenancy. This is an expedited hearing process, filed by the landlord on an emergency status, on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on March 23, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenant did not.

The landlord stated that they delivered notice of this hearing to the tenant in person on March 11, 2021. The Proof of Service document provided by the landlord shows they "could not obtain" a signature from the tenant to acknowledge their receipt. The landlord provided that after this the tenant sent a couple of text messages stating that they wished to submit evidence; however, the landlord received nothing from the tenant in relation to this expedited hearing application.

From what the landlord presents here on notifying the tenant of this hearing, in person, I am satisfied they served the tenant notice of this hearing, as they stated, on March 11, 2021. I accept the landlord's statement that their service also included their prepared evidence.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

- Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed the oral testimony and documentary evidence before me; however, in this section I describe only the evidence and submissions relevant to the issues and findings in this matter. That is, I consider only material that is relevant to the landlord's application for an early end of tenancy for cause. After taking an oath from each party present representing the landlord, I gave them the opportunity to speak to the issue and present their evidence.

The landlord confirmed the details of the tenancy agreement they provided as evidence for this hearing. The start date was September 1, 2018. The tenant pays $1,691 at the start of each month. Both the landlord and tenant signed the agreement on August 31, 2018.

The landlord pointed to clause 42 in the agreement: "The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability." The tenant initialled and indicated "NO" to state they did not have an insurance policy at the time of signing the tenancy agreement.

Additionally, there is a separate document attached and forming part of the agreement that the tenant signed on August 31, 2018. This gives a description of 3rd party liability and an illustrative example of the concept. Above the signature line, the statement reads: "We the undersigned have read and understand that it is our responsibility to acquire tenant insurance."

The landlord gave evidence to show how they feel the conduct of the tenant is sufficient reason to end the tenancy in an expedited fashion. This stems from the tenant not reporting a water leak under the kitchen sink, one that started in March 2020. The tenant told the landlord directly that the leak started in March 2020 when the landlord formally inspected the unit on January 21, 2021.

Due to the visible presence of mould, as evidence of extensive and prolonged leaking, the landlord retained a remediation company to examine the issue. They notified the tenant of the pending visit from the remediation company, with the visit scheduled for February 8, 2021. The visit went ahead and on February 10, 2021 the remediation contractor advised of the presence of mould. The contractor advised that the problem would increase the longer that remediation waits.

In the interim, the landlord issued a One-Month Notice to End Tenancy for Cause to the tenant on February 11, 2021. In addition to other issues of disturbance to the neighbouring tenant, the landlord issued the notice because the tenant did not report the leak since March 2020. Reporting of this was breaching a material term of the tenancy agreement, and in the document served to the tenant the landlord identified damage to be "in excess of $10,000." Additionally, the tenant not providing insurance information to the landlord breaches a material term of the tenancy agreement.

In the hearing the landlord advised that the validity of this February 11, 2021 notice is the subject of an upcoming review. The tenant applied to cancel this notice, and the hearing is scheduled for May 10, 2021.

By letter, the LL advised the tenant of the remediation work commencing on February 23, 2021. This advised that the kitchen would be unavailable, and the tenant must remove all items from the kitchen at the start. The landlord also advised that the remediation contractor required the tenant to vacate from February 23 – 25 because of asbestos removal. The landlord also advised there would be no compensation to the tenant for this temporary vacancy because the tenant did not report, and damage was extensive.

The remediation contractor visited the unit on February 23 to begin work. They advised the landlord that they spoke to the tenant who expressed they had "no notification or updates on schedules or start/finish dates for the emergency demo/abatement process." This was the second of their two visits on the original two days of the planned schedule.

The project manager again advised the landlord on February 25 that the tenant was not cooperating. The tenant advised they were "not leaving until [they] get live out compensation from the owner". Also, they had "no intention of leaving until this is done and dates are reset. As the project manager conveyed to the landlord: "every answer [from the tenant] was "no"."

The landlord stated the urgency to this application is that of the risk to the property, being a palpable insurance concern. The insurance company advised that the damage could enter the structure of the house, and the landlord clarified this to say the mould could enter the beams and structural foundation of the home. Additionally, the neighbouring tenant below has health concerns, with a compromised immune system.

The tenant did not attend the hearing and did not submit documentary evidence for consideration.

Analysis

The *Act* s. 56 provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

> 56(1) A landlord may 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 tenancy were given under section 47 *[landlord's notice: cause]*, and
> (b) granting the landlord an order of possession in respect of the rental unit.

Section 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different s.47 of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

> 56(2) . . .
> (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 . . .

I have considered the evidence of the landlord concerning the conduct of the tenants.

The landlord here presents evidence that the tenant is blocking their efforts at remediating a lingering leakage problem that threatens to damage the structure of the house. This involves preventing entry by the team who can start the work of remediation. The tenant's reason for not allowing entry is their demand for compensation during the time they would need to be away from the unit. Reciprocally, the landlord feels that is an issue for the tenant's own insurance to cover, in light of the tenant's non-reporting of the issue in a timely manner.

The *Act* s. 56 is reserved for situations where a tenant commits a serious breach. I find the tenant's conduct described by the landlord is not on a level with what is set out in s. 56(2).

While the landlord presents that the tenant in the adjoining unit has health concerns, I am not satisfied this equates to the tenant's actions seriously jeopardizing health or safety of an individual. It is not proven in the evidence, other than the landlord's statements, that the neighbour has a health concern that would legitimately be exacerbated by anything sourced back to the leak. It is not definitely proven that there is an existence of mould to the extent that it poses a significant health hazard. The report from the remediation team sent to the landlord on February 10 sets out damage in the kitchen: cabinets/countertop, laminate flooring and drywall. This does not present a palpable hazard to health or safety.

The remediation team recommended that work begin immediately. In the evidence this recommendation is shown to be made more informally via email. In the hearing, the landlord added that the team advised it required the involvement of insurance. The landlord also stated the insurance company expressed concern that damage could enter the structure of the house. I find this is a legitimate, immediate concern; however, it does not show 'extraordinary damage to the rental property' as set in s. 56(2)(a)(v). I acknowledge this is an effort at mitigation on the part of the landlord; however, immediately ending a tenancy must be the result of something that is *urgent* and related to *extraordinary* damage.

For these same reasons, I am not satisfied there is a significant risk to the property. There is no evidence showing contamination with mould through to other areas of the rental unit. Therefore, I find the area of risk is relatively contained in comparison to the entire structure of the building. As serious as the problem may be, with the potential for much more significant damage present, as of the time of this hearing to decide on an end of tenancy, the issue is not *severe* in nature which is what s. 56 contemplates.

In conclusion, I find the evidence presented here on the tenant's behaviour does not rise to a level that is sufficient to end the tenancy in this manner. This is based on the evidence presented by the landlord in this hearing.

I understand the issue presents difficult circumstances for all parties involved and is exacerbated by the tenant's conduct. Given the section of the legislation the landlord has applied on to end the tenancy, an imminent danger with palpable effects is not proven in the evidence. The landlord has not shown that this means of ending the tenancy must happen over and above that of other sections applicable in the *Act*.

An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, so significant that it would warrant the tenancy end sooner than had the landlord issued a One Month Notice to End Tenancy for

Cause. I find that the evidence and oral testimony presented by the landlord does not show this to be the case.

I find the landlord has not proven there is a valid reason to justify an order that ends the tenancy early by application of s. 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a s. 47 one-month Notice to End Tenancy.

Because the landlord was not successful in this application, they are not entitled to a return of the application filing fee.

Conclusion

The landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 24, 2021

Residential Tenancy Branch