Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

This Expedited hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An early end to tenancy because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented at the hearing by property manager, PN ("landlord"). As both parties were present, service of documents was confirmed. The tenant testified she received the landlord's Notice of Dispute Resolution Proceedings package although it was received late due to the tenant's requirement to temporarily vacate the rental unit for her own safety and the Not Safe to Occupy Order issued by the city. Despite receiving the Notice of Dispute Resolution Proceedings package late, the tenant was ready to proceed to have the merits of the landlord's application heard.

The tenant testified that she didn't receive the landlord's evidence until last night and didn't submit any evidence until last night. At the time of the hearing, none of the tenant's evidence was available for my consideration. Pursuant to Rule 10 of the Residential Tenancy Branch Rules of Procedure, the landlord was required to provide the Residential Tenancy Branch and the tenant with all the evidence he intended to rely upon when filing and serving his application. As such any evidence provided to the Residential Tenancy Branch by the landlord on December 3rd was excluded from consideration in this decision.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of

Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to prove that the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, pursuant to section 56?

Can the landlord recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that they attended a previous hearing concerning the tenant's application for emergency repairs on October 4, 2021 and a decision was rendered in the tenant's favour on October 7th. The file number for the previous decision is recorded on the cover page of this decision.

In that decision, the arbitrator ordered that the landlord make all the necessary repairs to the rental unit's electrical system in accordance with municipal by-laws and heritage site requirements. The arbitrator also ordered that the tenant's rent would be reduced down to $100.00 per month until the landlord has completed all required repairs.

The landlord gave the following testimony. The rental unit is one of five residential units in a very old heritage building. The building also houses three commercial tenants. This tenant's unit is one of two that share a bathroom on the second floor. The landlord purchased the building in October 2020 and when it was purchased, the building suffered from neglect. There were issues with the roof, the plumbing, the structure and the electrical system. The tenant was already living in the rental unit when the landlord purchased it.

The parties agree that the landlord commenced work to repair the roof in August of 2021 but when those repairs were done, water started leaking into the tenant's unit, causing plaster and drywall to fall, causing an unsafe situation with the electrical system and potential asbestos contamination. The tenant moved out of the unit in late August 2021 but continues to pay rent in accordance with the previous arbitrator's order.

On November 23, 2021, the city issued a Not Safe to Occupy Order and sent the landlord a letter stating that there are unsafe conditions in the building including crumbling walls and ceiling finishes causing probable asbestos contamination due to a leaking roof and a leaking roof resulting in possible electrical damage and fire hazard to the structure and occupants.

The landlord testified that he is required to seek heritage approvals to have the remediation work done. The approvals and permits are tedious, and he is still waiting for them from the city. The landlord testified that the only other current residential tenancy in the building belongs to a tenant occupying the ground floor of the unit not affected by the Not Safe to Occupy Order. The three commercial units are a grocery store that is currently vacant due to the structural repairs required to bring it back to code; a clothing store occupying a space between the tenant's building and the one beside it; and a hair salon. The clothing store and hair salon are commercially tenanted at the moment.

The tenant gave the following testimony. She has been living with her parents since August 2021 due to the unsafe condition of the rental unit. She is paying the $100.00 per month rent in accordance with the Arbitrator's order and is fully up to date on paying her rent. The tenant argues that in order to succeed in this matter, the landlord must show how her direct actions or negligent behaviour provide sufficient reason to end the tenancy. In this case, it is the landlord's actions or failure to keep the rental unit in good repair that is the cause for ending the tenancy. The tenant testified that the landlord has not done anything inside or outside the building since the arbitrator's decision except now the front door does not lock. The tenant agrees there is asbestos in the hallways where the ceiling has collapsed, and that the landlord wants to make the situation dangerous and inhospitable for the tenant to return. The tenant argues that if the landlord wanted to do major repairs to the unit, he should have properly served her with a 4 Month Notice to End Tenancy for Demolition or Conversion to Another Use.

Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56(2)(a)**,** I need to be satisfied that 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, **and**

(b) it would be unreasonable, or unfair to the landlord, the tenant 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.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:
… there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)

The landlord seeks to end a tenancy early by expedited hearing without serving the tenant with a notice to end tenancy. As such, the landlord must provide compelling evidence to prove to me the tenant has committed acts so egregious that the tenancy must end immediately without giving the tenant a full month to move out as they would if served with a notice to end tenancy under section 47. As stated above, the tenant must pose an imminent danger to the health, safety or security of another tenant or to the landlord. Simply refusing to end the tenancy does not qualify as putting the landlord's property at significant risk or seriously jeopardizing the lawful interest of the landlord which would be the two only potential reasons from the list above that could fit the criteria under for ending the tenancy under section 56. I understand from the landlord's perspective that it would be expedient and less costly for the heritage building repairs to be done with the tenant gone, however for this application, the landlord must prove to me that the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord. The landlord has not succeeded in doing so.

The second criteria for an early end to tenancy under section 56 falls under section 56(2)(b) which requires the landlord to satisfy me that it would be unreasonable or unfair to the landlord, the tenant or other occupants of the residential property to wait for a notice to end tenancy under section 47 to take effect.

I do not find it unreasonable for the landlord to wait for a notice to end tenancy issued under section 47 to take effect. If the reason for ending a tenancy under section

47(1)(k) were given, *(the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority*) the landlord could seek for an order of possession after serving a notice to end tenancy based on that reason. Likewise, the tenant can file an application to dispute the notice under section 47(4). Further, Section 56 (application for order to end tenancy early) simply does not allow a landlord to end a tenancy in order to comply with a federal, British Columbia, regional or municipal government authority.

In conclusion, the landlord has not provided sufficient evidence to satisfy me that the tenant has "done" any of the things listed under section 56(2)(a) of the *Act*. Second, the landlord has not proven to me that it would be unreasonable to wait for a notice to end tenancy issued under section 47 to take effect. Third, section 56 does not provide provisions for ending a tenancy early to comply with a government order. For these reasons, the landlord's application for an early end to the tenancy under section 56 is dismissed without leave to reapply.

The tenancy is to continue until it is ended in accordance with the *Act*.

As the landlord's application was not successful, the landlord is not entitled to recover the $100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply.

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: January 04, 2022

Residential Tenancy Branch