



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Early End to Tenancy and an Order of Possession, pursuant to section 56

The landlord and tenant C.J-A.H attended the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties affirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The tenant confirmed receipt of the landlord's application for dispute and evidence after it was posted on her door on January 19, 2022. I find the tenant was served in accordance with sections 88 and 89 of the *Act*. The tenant confirmed no evidence was supplied in response to the application.

Issue(s) to be Decided

Is the landlord entitled to an Early End of Tenancy?

Background and Evidence

The parties agreed the tenancy began on August 1, 2020 and rent is \$1,450.00 per month along with hydro costs. Two deposits of \$725.00 each (pet and security) were paid to the landlord and continue to be held in trust.

The landlord explained she sought an early end of tenancy because of the damage to the rental home associated with a burst water pipe that caused a significant amount of water to flow into the house for 12 hours. The landlord said that the break occurred on December 27, 2021 and that the damage which resulted from the break has rendered the home uninhabitable. The landlord said that significant repairs were required in the home following this break and that the rental home could not be repaired until the tenants vacated the property.

Tenant C.H. agreed that there was a significant amount of damage to the property, stating that she agreed the tenancy needed to end.

Analysis

Section 56.1 of the *Act* states, "If the direction is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order (a) deeming the tenancy agreement ended on the date the director considers the performance of the tenancy agreement became impossible, and (b) specifying the effective date of the order of possession."

Policy Guideline #34 states, "A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because of an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible."

After having reviewed the photographic evidence uploaded by the landlord and having considered the testimony of both parties, I find that the tenancy is frustrated because the unit is uninhabitable and the damage is so extensive that regular occupation of the home is impossible.

I find that the tenancy became frustrated on January 7, 2022 the date on which the landlord was informed by an insurance adjuster that the tenants would need to vacate the premises in order for the repairs to be completed. I find this letter submitted in evidence by the landlord contains significant detail concerning the scope of the work required and satisfies me that the work to be undertaken would render the property uninhabitable.

Pursuant to section 56.1(b) I grant the landlord an Order of Possession for February 20, 2022. I find this will provide the tenant with sufficient time to gather their belongings and vacate the premises due to this unforeseen event which led to the end of their tenancy.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit by 1:00 PM on **February 20, 2022** and following receipt of the Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

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: February 07, 2022

Residential Tenancy Branch