Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

On September 21, 2022, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Landlord advised that the Tenant was served the Notice of Hearing and evidence package by posting it to the Tenant's door on September 30, 2022, and the Tenant confirmed receiving the Notice of Hearing package. However, she stated that the Landlord did not include any documentary evidence in this package. The Landlord then stated that she did not include any of this evidence in the package to the Tenant because this evidence was already provided to her by the Tenant. As the documentary evidence that the Landlord is attempting to rely on was not served to the Tenant pursuant to Rule 10.2 of the Rules of Procedure, I have excluded this evidence and will

not consider it when rendering this Decision. However, the Landlord was permitted to make oral submissions with respect to the contents of this documentary evidence.

The Tenant advised that she did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2015, that rent was established at $1,305.00 per month, and that it was due on the first day of each month. A security deposit of $600.00 and a pet damage deposit of $300.00 were also paid. In addition, the Tenant testified that some sort of move-in fee of $100.00 was also charged. However, this was not addressed as it was not pertinent to this Application, but it is possible that it may or may not comply with Section 7 of the *Residential Tenancy Regulation*.

The Landlord testified that she passed the rental unit sometime in mid-September 2022 and noticed debris on the patio. She stated that she was concerned about this, so she emailed the Tenant, but received no response. She testified that she eventually received an email back from the Tenant, who had informed her of a serious mold, mildew, and water ingress issue into the rental unit. She stated that she also received

pictures from the Tenant of the extent of the damage, but these pictures were actually taken as far back as June 2022. She advised that the Tenant had taken it upon herself to remove laminate flooring and open up an exploratory hole in the rental unit, without her consent.

She submitted that she then contacted the strata, who had called in a restoration company. This company attended the rental unit, brought in dehumidifiers, and stated that asbestos testing needed to be conducted. It is her belief, based on the damage that she observed, that the water ingress issue had been occurring for a substantial period of time; however, the Tenant failed to inform her of this issue until on or around mid-September 2022. She stated that the whole floor needs to be removed, that the murphy bed must be disposed of, and that the patio area must be remediated.

The Tenant advised that it is her opinion that home ownership comes with costs. She testified that the water ingress issue was not as a result of her negligence, but she first discovered the extent of the problem in mid-June 2022. However, she did notice an odour and that she had sinus issues before this point. She confirmed that she took pictures of the damage caused by the water ingress in June 2022, but she acknowledged that this had likely been occurring for a substantial time before this because this “kind of water issue is not a short-term problem” and that it was a “long standing problem.” She described the extent of the damage as affecting the concrete floor, that the underlay and carpet were soaked, that there was mold, that there was a “lot of water”, and that the framing around the patio door was damaged.

She testified that upon seeing this water ingress issue, she “kind of snapped” and panicked, and she tore up the laminate flooring in an attempt to remediate the problem because it was her belief that this was a “health issue”. As well, she justified her actions because it was her belief that the Landlord would have to remove this flooring anyways. She confirmed that she did not have any professional qualifications in order to make any competent assessment of the damage, or to conduct any appropriate remedy to this situation. Furthermore, she acknowledged that she did not have any consent from the Landlord to undertake any renovations to the rental unit or remove any flooring to remediate this issue.

She advised that she did not advise the Landlord of this issue in June 2022 because she had then contracted COVID that lasted three weeks, because her grandparents had passed away over the summer, and because she went away camping in September 2022. She testified that she had “no intent to keep the damage from the Landlord”, that

she “just did not get around to it”, and that she “was going to tell the Landlord but was scared of knowing what might happen.” She stated that “things take time to notify the Landlord” and that she “tore up the laminate because [she] had nowhere to go.” She claimed that “whenever there was an issue before, [she] would notify the Landlord”; however, she did not do so on this occasion because she was worried that she would be required to move based on the extent of the damage.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant, or a person permitted on the residential property by the Tenant, has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord’s property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord’s property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property,* ***and***

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.

I find it important to note that the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I also note

that the threshold of evidence required to justify an early end of tenancy Application is much higher than that of an Application for an Order of Possession based on a One Month Notice to End Tenancy for Cause.

When reviewing the totality of the evidence before me, the consistent and undisputed testimony is that the Tenant first discovered a significant water ingress issue into the rental unit in June 2022 that had already caused a considerable amount of damage to the rental unit. Furthermore, the consistent and undisputed evidence is that the Tenant failed to inform the Landlord of this damage, and then took it upon herself to attempt to remediate this damage by removing flooring to the rental unit, without the Landlord's consent. While the Tenant provided some personal circumstances for not informing the Landlord of this problem, if this was such a major "health issue" that led her to believe it was necessary to start removing flooring, it is not clear to me why she did not believe it was equally necessary to inform the Landlord of this immediately.

Section 32 of the *Act* outlines the Landlord's obligation to repair and maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a Tenant. Furthermore, the Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. I note this because it is incumbent on the Tenant to advise the Landlord of a repair issue as soon as possible so that the Landlord can address it and mitigate any future loss or damage. Otherwise, a fairly routine repair could easily become a significant, costly expense. In addition, it is also possible that by neglecting to inform the Landlord of a problem in the rental unit, the Tenant could become liable for any additional damage that occurs.

Regardless, as noted above, the Tenant did not notify the Landlord of this problem that had been first discovered allegedly in June 2022. While I agree that the Tenant may have faced some personal challenges, it does not make any logical sense that the Tenant would not immediately advise the Landlord of such significant damage to the rental unit so that the Landlord could start to remedy the issue. In fact, given that the Tenant testified that she "just did not get around to it", I can reasonably infer that it is uncertain when or if the Tenant would have ever even notified the Landlord of this problem. It is also entirely possible that she may never have done so if the Landlord did not happen to send an email to the Tenant in September 2022. By not informing the Landlord immediately that there was a problem that needed repair, I am satisfied that this withholding of information over a substantial period of time would potentially turn a

possibly routine repair situation into a more significant, considerable issue that could put the Landlord's property at significant risk.

Moreover, in addition to not informing the Landlord that there was a problem, I find it important to note that the Tenant's next course of action was to undertake repairs herself, without any professional qualifications and without the Landlord's authorization to do so. Given that she had no knowledge, training, or expertise in assessing and remediating water ingress issues, it is not clear to me why she would elect to engage in these actions herself. Furthermore, given that she had no experience or qualifications to conduct these repairs, nor any authority under the *Act* to do so, there is a very significant likelihood that the Tenant's actions would have caused further damage to the rental unit.

Ultimately, I am satisfied that the Tenant's above behaviours posed a danger that would fall under the categories of seriously jeopardizing the health or safety or a lawful right or interests of the Landlord or another occupant, putting the Landlord's property at significant risk, and causing extraordinary damage to the residential property.

The Landlord must also demonstrate 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 the tenancy under section 47 for cause" to take effect. Based on the consistent and undisputed testimony, I am satisfied that the Tenant has engaged in behaviours that endangered the property, and should the tenancy resume, there is no doubt that there would be a genuine concern for the ongoing safety of the rental unit.

Given the scope of the damage described, I am skeptical that the Tenant would not have had some inkling that there was a problem prior to June 2022. While it is entirely possible that the true reason that the Tenant did not divulge this issue to the Landlord was because she feared that the tenancy might end, I am satisfied that her inappropriate manner of dealing with this water ingress issue was actually the catalyst for the tenancy ending.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I am satisfied that there has been sufficient evidence provided to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Pursuant to Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant, and all occupants, fail to comply with this Order, this Order may be filed and enforced as an Order of 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: October 13, 2022

Residential Tenancy Branch