



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order to end the tenancy early and to receive an order of possession, due to health or safety issues pursuant to section 56 of the Act, and to recover the cost of the filing fee.

The landlord agents JE and MJ (agents 1 and 2 respectively) and the tenant attended the teleconference hearing. The parties were provided the opportunity to provide affirmed testimony and were provided the opportunity to present evidence submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and makes submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they had been served with and had the opportunity to review documentary evidence from the other party. Accordingly, I find the parties to have been sufficiently served in accordance with the RTB Rules. I have reviewed all testimony and documentary evidence before me that met the requirements of the RTB Rules. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the start of the hearing and were advised that the decision would be sent to both parties by email.

Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession for health or safety purposes under the Act?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2017 and converted to a month-to-month tenancy after March 31, 2018. The landlord writes in their application the following:

There is water sewage backing up into the property. The house is rendered inhabitable by professional plumber. We have asked tenant to stay off the property while the repair work takes place. However, the tenant keeps using the property which lead to further flood damages.

[reproduced as written]

Agent 1 testified that in early October 2022, the landlord received an email from the tenant stating that there was water coming out from their toilet and bathtub and was flooding the rental unit. Agent 1 stated that on October 11, 2022, a plumber was called to the rental unit to do an inspection, which the tenant stated was actually on October 13, 2022 and not October 11, 2022.

The agents confirmed that the rental property is a two-storey house so if anyone upstairs is using the bathroom, that water will leak downstairs through the toilet and bathtub, due to what was determined by the plumber(s) to be roots clogging the main wastewater drainpipe of the home. Several emails from both parties were reviewed during the hearing, as were testimony documents from the agent, plumber, building manager, maintenance supervisor and building manager. In addition, a caution letter dated October 18, 2022 (Caution Letter) was also provided.

The Caution Letter states as follows:

As you are now aware, there has been a sewage backup in the property that led to waste water accumulation in the basement. We have asked three different technicians and plumbers to assist with the repair. Unfortunately, the damage is significant. Our plumber has indicated that the main drain of the house is heavily clogged and severely damaged by the large roots in the area.

Our plumber has been in the suite on Oct 13 and Oct 18, 2022 and noticed there has been more water accumulating in the basement. He has also noticed that items inside the house have been moved and there are more dishes piling in the kitchen sink. This leads the plumber to believe that someone has been in the suite to use the bathroom and sink. Please note that using the bathroom in the house will lead to more extensive property damage and lengthy repair.

As stated in my emails on October 12, 14 and 17, 2022, nobody should access the unit at this time, other than professional plumbers and technicians. While the upper floor seems unaffected on the surface, all wastewater is going into the basement when the upper floor is used. **Due to health and safety reasons and to minimize further property damage, please do not access the house until the repair is completed.** If you wish to access the house to gather belongings, you must arrange a time with the building manager in advance. If it is found that the house has been accessed by you or your guest without authorization, we will issue a 30 days' notice to end tenancy.

Thank you for your attention to this letter.

[reproduced as written]

The landlord named a document "Tenant's response to the Caution Notice" however it contains an email from October 17, 2022 which predates the Caution Letter dated the next day, on October 18, 2022. The agent suggested that the conflicting date may be due to the tenant being in Mexico currently.

The tenant responds to agent 1 as follows:

Hi [REDACTED],

No one is using the house. Maybe you should cut the water off as I suggested.

What about the cleaning?

[REDACTED]

Agent 1 presented a document from a maintenance supervisor, which is not dated, and which states in part as follows:

I returned to the house on Oct 18, 2022, to prepare for digging. During this visit, I noticed there was more water in the lower floor. This could have been caused either by further backflow or someone using the plumbing system. When I inspected the rest of the house, I noticed some of the items in the house have been moved and there were more dirty dishes in the sink. This leads me to think that someone has ran the water in the house, which is causing more damages.

On October 24, 2022, I returned to the house to begin digging at the site where the plumbers indicated the clog in the main drain to be. I walked around the house and noticed there were around 20 bottles of beer cans and cigarette butts in the backyard. These items were not there before. While myself and two other colleagues worked in the front yard, we saw a lady came out of the front door of the house. It took me by surprise because I did not expect anyone to be staying at the house. I talked to the lady and although her language is limited, I gathered that there are two other guys currently living in the house. |

Since there were people at the house, I did not feel comfortable accessing the unit. As such, we tried to complete the pipe repair as much as we could but had to delay the testing until access is available.

[reproduced as written]

As indicated above, the maintenance supervisor (Supervisor) provides two reasons as to why they had noticed more water accumulating in the basement, being either further backflow or someone using the plumbing system. The Supervisor writes that they saw more dirty dishes in the sink than there was before, which led them to think the someone has ran the water in the house, which is causing more damages. In addition, they noticed 20 bottles of beer and cigarette butts in the backyard that were not there before. In addition, the Supervisor writes that when they and two others were working in the front yard, they saw a lady come out of the front door which surprised them as they did not expect anyone to be staying at the house.

Two photos were reviewed which show a plumber standing in what appears to be an inch or two of wastewater near the bathroom in the rental unit. The two photos show the same amount of wastewater in the rental unit. Agent 1 also presented an email dated October 31, 2022 from MH of a plumbing company which confirms they attended a flooded basement due to a "blocked sanitary main." MH also writes that they saw 2 men come to the upstairs unit and speak to someone in a bedroom and later saw 3 different men in the living room watching TV. In addition, MH writes that two men were speaking Russian and the other 3 men were speaking Spanish and that this occurred between October 17, 2022 between 4-7:30 p.m.

The tenant stated that they do not know anyone who is Russian and that her boyfriend, JC (JC) had a friend with them to retrieve their personal belongings including winter coats, etc. Agent 1 testified that they are familiar with JC and that the person that they saw on October 24, 2022 was not JC and refused to provide their identification. Agent 1 stated that the tenant previously worked for the company listed on the Caution Letter so they had already met JC and knew that the person they saw was not JC, even though that person said they were JC.

The landlord also alleges that a person named DM called them and said “no one is moving out of the house.” The tenant testified that she does not know some named DM and that the name is not Spanish.

Agent 1 presented the following timeline during the hearing:

October 10, 2022 – Tenant reported water coming out from the toilet and bathtub

October 11, 2022 – Property manager reached out to [REDACTED] Plumbing and maintenance technician for inspection and repair. [REDACTED] was not able to make it that day.

October 12, 2022 – Contacted [REDACTED] Plumbing and plumber inspected the unit. Due to the scale of the damage, they were unable to repair and suggested that we contact a larger company for assistance

October 13, 2022 – Inhouse maintenance supervisor inspected the house and suspected that there is a clog in the sewage. All wastewater from the upper floor are draining into the lower floor. We requested the tenant to stay out of the property until further notice.

October 17, 2022 – [REDACTED] Plumbing arrived and provided video footage of the location of the clog. They suspected that our plumbing is tied with unit next door. They have temporarily opened up the pipe but it was a temporary fix. They recommended that the new pipe to be put in and to stop using the plumbing until the service is full restored. Picture and report provided in RTB package.

October 18, 2022 – In house maintenance supervisor was informed of [REDACTED]'s finding and begin to plan for digging up the main drain and replace the broken pipe. Maintenance supervisor inspected the house again and noticed that items in the house was moved and dirty dishes were in the sink, which indicated people living in the house.

October 21, 2022 – Building manager walked around the property at night and noticed the lights outside of the house was on.

October 24, 2022 – After the weekend, maintenance supervisor returned and noticed beer cans and cigarette in the backyard that was not there before. 3 Maintenance staff worked to dig up the main pipe in the front yard and noticed a girl coming out of the house. Supervisor spoke to the girl and she claimed that 2 other boys were living in the house. Property manager knocked on the door and a younger gentleman answered the door. Property manager questioned his identify and gave him a 24 hours notice. After 20 minutes later, property manager received a phone call from “D [REDACTED] M [REDACTED]”. This person claimed that “no one is moving out of the house” and they will take the issue up to RTB then hung up.

October 25, 2022 – Filed for RTB

Agent 1 also presented a photo of a person at the front door, which the agent states was from October 17, 2022.

The tenant asked if the rental unit was habitable yet and agent 1 confirmed it is not due to mould remediation work still to be done and hopes that the drywall and mould are repaired by the end of December 2022. The tenant stated that the landlord has not offered to compensate them for living elsewhere or arranging any other place to live. The tenant also denies that JC or any other person she knows has been using the plumbing in the home since they were notified of the flood caused due to roots blocking the main sanitary drain.

Agent 1 testified that as of the date of the hearing, the main sanitary drain has been repaired/replaced and that all water has been removed. In addition, they stated that the landlord still has to repair the damaged drywall and remediate all of the mould in the rental unit before the tenant can move back into the rental unit.

Agent 1 confirmed that they have not served a 1 Month Notice to End Tenancy for Cause (1 Month Notice) on the tenant as of the date of the hearing and are relying on this application to end the tenancy instead. When agent 1 was asked why they had not served the tenant with a 1 Month Notice as they indicated in the last sentence of the Caution Letter if they found that the house has been accessed by the tenant or their guest without authorization.

Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act indicates:

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 the 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.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession **only if satisfied, in the case of a landlord's application,**

(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, **and**

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

[emphasis added]

The burden of proof is on the landlord to provide sufficient evidence to meet the two-part test as follows:

Part One: Is there sufficient evidence to support that the tenant or a person permitted on the property by the tenant, has done anything listed in Section 56(2)(a)(i) to (v) listed above?

Part Two: If yes to Part One above, is there sufficient evidence to support that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a 1 Month Notice to take effect?

Given the evidence before me and that the landlord has the burden of proof, I find that that the initial flooding of the rental unit was not caused by the actions of the tenant, as the main sanitary drain was confirmed to be clogged with roots and has since been repaired/replaced by the landlord. The primary issue before me as a result, is whether the tenant or their guests have continued to use the plumbing in the home to exacerbate the flooding causing additional damage.

After carefully reviewing the totality of the evidence presented, I find the landlord has failed to meet the two-part test for the following reasons. Firstly, I find the email response from the tenant dated October 17, 2022 confirms that the tenant suggested to the landlord to turn off the water at the home. If there were further leaks as a result, I find the landlord or their contractors failed to turn off the main water supply to the home. The agents failed to present any evidence that the landlord had shut off the water supply to the home and that someone turned it back on. Instead, I find the landlord more likely than not never turn off the main water supply line and that they can not blame the tenant for such an oversight.

Secondly, I find the photo evidence does not support that additional wastewater was in the rental unit and that if there was additional water or additional damage after the initial flooding, that it would be more likely than not that someone would have taken a photo of that, which is not before me.

Thirdly, I find that the tenant or their boyfriend/guest were not violating the Act, regulation or tenancy agreement by entering the rental unit to pick up their belongings as stated by the tenant. I find the Caution Letter does not legally prohibit the tenant or their guests from entering the rental unit, especially if what they were doing was retrieving their personal belongings. In fact, I find it completely reasonable that in a flooded home that anyone with personal belongings would retrieve those to prevent damage by the flood. I also find it illogical to conclude that the tenant or their guests would purposely enter the home to make the problem worse as that would further delay the ability to move back into the home.

While I find it is not necessary to consider part two of the two-part test described above as I find the landlord has failed to provide sufficient evidence to support part one described above, I will address part two of the two-part test as I find that the landlord

has had sufficient time to issue a 1 Month Notice and have not done so. Instead, agent 1 confirmed that the landlord is relying on this application under section 56 of the Act. Section 56 of the Act includes a higher burden of proof than a 1 Month Notice includes.

Given the above, I find that the landlord has failed to meet the burden of proof in proving both parts of the two-part test under section 56 of the Act. Given the above, **I dismiss** the landlord's application due to insufficient evidence.

As the application has been dismissed, the filing fee is not granted.

Conclusion

The landlord's application fails and is dismissed due to insufficient evidence.

The filing fee is not granted.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to the parties at the email addresses confirmed by the parties during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 25, 2022

Residential Tenancy Branch