



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, OPC, MNDCL-S, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the “Act”) for Orders as follows

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The tenant applied as follows:

- For cancellation of the landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47 of the Act
- For an order requiring the landlords to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act

The landlords applied as follows:

- For a monetary order for compensation for monetary loss due to damage pursuant to section 67 of the Act
- For an Order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlords being represented by landlord AL, and JL while the tenant, CV appeared for herself, along with a witness TM. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

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

The tenant confirmed receipt of the One Month Notice dated June 16, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with the notice in accordance with the Act

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, are the landlords entitled to an order of possession?
2. Are the landlords entitled to reimbursement for filing fees?
3. Are the landlords entitled to a monetary order for compensation for damage?
4. Is the tenant entitled to an order requiring the landlords to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced on March 1, 2021. Rent is currently \$913.00 per month due on the first day of the month. The tenant paid a security deposit of \$450.00 and a pet deposit of \$300.00. The tenant still occupies the rental unit.

The following facts are not in dispute:

- On June 4, 2022, a flood occurred in the tenant's rental unit. Water from the flood flowed outside the tenant's rental unit into the landlords' space.
- The tenant immediately contacted the landlords who attended, and all parties made efforts to clean up the water
- The tenant allowed access to the unit June 13, 2022
- On June 14, 2022, the landlords gave the tenant written notice to access the suite on June 16, 2022. The tenant refused access.
- The landlords contacted their insurance company and contractors were hired to assess the damage and provide restoration services.
- The tenant secured a dehumidifier and used it in the rental unit to dry the flooring and other areas that had been exposed to water from the flood.

The landlords stated that the flood had potentially caused damage to the flooring in the rental unit due to the large amount of water. The landlords decided to make an insurance claim and contacted their insurance company. An inspector attended the rental property on June 8, 2022 and detected excess moisture. On June 10, 2022, the landlords contacted the tenant and asked her to cooperate with the remediation process. They gave the tenant written notice on June 10, 2022, requesting access to the unit on June 13 and 14, 2022 to assess the damage and conduct remediation. The tenant allegedly refused the landlord's request to have a dehumidifier installed and did not allow access June 14, 2022.

The landlords stated that no work has been done in the tenant's rental unit to date as the tenant has refused to cooperate with landlords' efforts to assess and repair the damage in the unit. The following is an excerpt from an email sent from the insurance company to the landlords on June 16, 2022:

Due to the discovery of surface mold growth to drywall in the hallway upon removal of baseboards, we must continue to reiterate our recommendation to proceed with further mitigation services as soon as possible so as to avoid the prospect of further secondary damages.

We note that residual moisture was detected in the drywall and under the laminate flooring in the tenant's unit during our prior inspection of the basement. The longer the building materials remain wet, the higher the risk of secondary damages manifesting as a result of the residual moisture.

Belfor has mitigation crews that are ready to proceed with the mitigation work when your tenant will grant access to the unit. However, please note that in order for the mitigation crew to successfully carry out the emergency services, your tenant's belongings will have to be removed from the unit so that all areas of the unit can be accessed.

The landlords are seeking an order of possession for the rental unit to repair the damage. They are also seeking monetary compensation for the following:

1. Due to the delay in repairs, the insurance company advised the landlords that they are increasing their insurance deductible from \$2,000.00 to \$10,000.00.
2. The landlords' insurance premiums for the year have also increased due to the flood and the landlords are claiming \$197.00 for the total cost of the insurance premiums for the term of January 2022 to January 2023.
3. As the landlords chose to make an insurance claim for the damage, they paid the insurance deductible of \$2,000.00 required by their policy and are seeking compensation from the tenant for that amount.
4. Compensation for a loss of rental income for two months, based on an estimate by the restoration company of the time it would take to complete the restoration and the need for the rental unit to be vacant during that time.

The tenant stated that on June 13, 2022 she had her own dehumidifier in the rental unit and was repairing the damage. She doesn't recall the landlord requesting access for June 14, 2022. The tenant states that there was no need for the landlord to access the unit on June 16, 2022, as she was repairing the damage herself. She had placed a dehumidifier in the rental with the landlords' permission and all of the damage was repaired. She refused access June 16, 2022 for that reason and because she was experiencing some health problems and required privacy and rest. She produced a witness, TM who stated that in his opinion the tenant was acting appropriately in repairing the damage. The tenant stated that she would allow the landlord access to the unit on July 15, 2022.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The One Month Notice complies with the form and content requirements of section 52 and is therefore valid. In the One Month Notice the landlords cite two grounds under section 47 of the Act as the reasons for ending the tenancy:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d)the tenant or a person permitted on the residential property by the tenant has..

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii)put the landlord's property at significant risk;

(f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

Based on the landlords' oral evidence about the flooding and the significant amount of water involved, as well as reviewing the information provided by the insurance company and the restoration company, I find that the landlords' property, the rental unit and surrounding area, suffered damage as a result of the flood. This is not disputed by the tenant. The tenant did allow access to the rental unit one day in June, either June 13 or June 14, 2022. However, the landlords are currently unable to assess the extent of the damage without access to the rental unit on June 16, 2022, and the undisputed evidence is that the tenant has denied access for that date despite having received advance notice in writing of the landlords' intent to enter the unit and the reason for the entry. I find the tenant's proposal of an alternate entry date one month in the future was unreasonable given the evidence of the landlords that they were advised by the insurance and restoration companies that mitigation of damage due to flooding is time sensitive and must be done as soon as possible.

The reports from the restoration company that have been produced in evidence raise concerns about the extent of the damage inside the rental unit, including the possibility of remaining moisture and mold growth. While it appears that the tenant has made steps to repair the damage herself, her actions of refusing the landlord entry despite reasonable notice put the landlords' property at significant risk and could seriously jeopardize the health of the landlords or other occupants. The landlords have a lawful right to ensure that their property, the rental unit, remains safe and free of any health hazards. They are also entitled to determine whether they wish to take further action to mitigate or repair the damage caused inside the rental unit.

As the landlords have satisfied their onus to prove the validity of the notice, I find that the One Month Notice is enforceable, and the tenant's application for dispute resolution is dismissed in its entirety. As the One Month Notice is valid and I have dismissed the tenant's application, I find that pursuant to section 55 of the Act, the landlords are entitled to an order of possession.

The landlords have also requested compensation for damage caused as a result of the flood. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide

evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

The landlords have provided evidence both from the insurance company and the restoration company showing that damage to the rental unit has likely occurred due to flooding within the unit. However, given that the landlords have been unable to access the rental unit in a timely manner they are unable to give an accurate and fulsome assessment of the damage to the rental unit and to accurately quantify the loss. I am dismissing this portion of the landlords' application with leave to reapply once access to the unit is gained, and a proper assessment of damage can be done.

Having been partially successful, I also find the landlord is also entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

The landlords are granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlords are granted a monetary order for \$100.00 in recovery of the filing fee. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The tenants' application is dismissed.

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*.