



Dispute Resolution Services

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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, 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, and to recover the cost of the filing fee.

The landlord, a translator/agent for the landlord, TC 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.

With the exception of video evidence, which I will address below, all other documents by both parties were confirmed as having been received and reviewed prior to the hearing.

Preliminary and Procedural Matters

Regarding the video evidence from the landlord, RTB Rule 3.7 applies and states:

To ensure a fair, efficient and effective process, **identical documents** and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

[emphasis added]

As a result of the above, I exercise my discretion to exclude the video evidence as the landlord failed to serve the tenant with the same video file uploaded to the RTB Dispute Management System (DMS).

In addition, the parties confirmed their email addresses and were advised that the decision would be sent to both parties by email.

I will use the term landlord and the initials of the agent/translator TC synonymously in this decision for clarity as TC was translating what the landlord stated throughout the hearing.

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 written tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2022 and is not scheduled to end until March 31, 2023, whereby vacant possession is required for the landlord to occupy the rental unit. The rental unit is a basement suite of a two-storey home with access to the rental unit being down steps.

The landlord has included the following details as the reason for requesting to end the tenancy early pursuant to section 56 of the Act:

There was a major leak in water pipes which resulted in flooding of the entire basement so the unit requires major repairs. The property restoration company require the tenants to temporarily relocate for the entire duration of the repairs. The tenants refused to relocate which interferes with repairs, and jeopardizes the health and safety of other occupants. The repairs also need to be done to protect the property and prevent further water damage. Also, the tenants brought bed bugs from old bed

[reproduced as written]

The landlord testified that they were applying to end the tenancy early due to the tenant refusing to vacate the rental unit so the landlord can repair the rental unit that the landlord claims was damaged by flood, caused by a burst water main pipe. The translator/agent stated that the outside main water line to the house burst on October 10, 2022 and flooded both the inside and the outside of the rental unit. The landlord said that water was leaking into the rental unit from inside the rental unit furnace room and from the outside drain in the entranceway.

The landlord presented two photos, both of which showed water below the height of the threshold of the patio doors to the rental unit. The landlord was asked if they submitted any photos of the inside of the rental unit to show flooding inside the unit and the landlord confirmed they did not. The landlord affirmed that the video evidence showed flooding in the rental unit. The video evidence was excluded from this hearing due to a service issue described above.

The tenant responded to the landlord by denying that the inside of the rental unit was damaged by water. The tenant testified that the only water backing up through a drain was the patio area outside of the rental unit and that there is no drain in a furnace room in the rental unit. The tenant testified that there is a drain in the laundry room but that it was not flooding into the rental unit as claimed by the landlord.

The landlord testified that the main water line was repaired on October 11, 2022 and on October 10, 2022 the tenant called the Fire Department who attended the same day and turned off the water to the home to avoid flooding. The landlord confirmed that the first time a restoration company attended the rental unit was October 27, 2022.

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 prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

Given the lack of evidence to support that the interior of the rental unit was flooded and that the only photos evidence shows the outside of the rental unit with pooling water under the height of the threshold to the rental unit, I find the landlord has failed to meet the high burden of proof to support this application under section 56 of the Act. At the very least, I would have expected photo evidence to support that there was flooding inside the rental unit that was so serious that it required to the tenant to vacate temporarily until such time that the flood damage, which was not the fault of the tenant, was repaired.

As a result of the above, I find that the landlord has failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the Act. Consequently, **I dismiss** the landlords' application due to insufficient evidence.

The filing fee is not granted as this application has been dismissed.

Conclusion

The landlord's application fails and is dismissed due to insufficient evidence. 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. The filing fee is not granted as noted above.

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: December 5, 2022

Residential Tenancy Branch