Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

On December 16, 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*.

K.P. attended the hearing as an agent for the Landlord, and both Tenants attended the hearing as well. 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, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised 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.

K.P. advised that each Tenant was served with a separate Notice of Hearing and evidence package by posting them to the Tenants' door on December 22, 2022. Tenant J.M. confirmed receipt of these packages. Based on this undisputed testimony, I am satisfied that the Tenants were duly served the Notice of Hearing and evidence packages. As such, I have accepted this evidence and will consider it when rendering this Decision.

J.M. advised that they did not serve their evidence to the Landlord. As such, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral 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.

The parties agreed that the tenancy started on June 1, 2020, that rent was currently established at $1,397.65 per month, and that it was due on the first day of each month. K.P. stated that a security deposit of $675.00 was paid; however, J.M. stated that a security deposit of $675.00 and a pet damage deposit of $675.00 were also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration by the Landlord.

K.P. appeared to be disorganized and was not familiar with the details of this tenancy or with the limited documentary evidence that was submitted in support of this Application. However, he advised that the Tenants did not pay their hydro bill and were consequently living in the laundry room because they had no electricity. He referenced two pictures, dated November 15 and November 20, 2022, that were submitted as documentary evidence to support this position. He also stated that there was another picture, that was not submitted as documentary evidence, dated December 16, 2022, where the Tenants were in the laundry room on a mattress under a duvet. He testified that other residents of the building were uncomfortable with the Tenants' behaviour and made complaints about this; however, he did not submit any documentary evidence to corroborate the legitimacy of this testimony.

He then stated that at some point in December 2022, the Tenants were warned verbally, by himself and by the building manager, to refrain from this behaviour. As well, he advised that a security company removed the Tenants from the laundry room on December 13, 2022, because they were living there. He refenced the security report, that was submitted as documentary evidence, to support this position.

As well, he testified that multiple notices to enter the rental unit were given on December 15, 2022, and when the Landlord attempted to enter on December 16, 2022, it was impossible due to the sheer amount of garbage, debris, and property that was piled up. He referenced two pictures, submitted as documentary evidence, to corroborate the condition of the rental unit. He stated that he did not warn the Tenants that the state of the rental unit was unacceptable, and that it needed to be cleaned up

by a specific timeframe because the Tenants would respond to any warnings by yelling. Instead, he confirmed that this Application was made on December 16, 2022, and that he spoke with one of the Tenant's mothers on December 17, 2022, regarding this problem. He confirmed that there were no written warnings about this issue given to the Tenants, but he stated that he has never seen a rental unit in this type of condition. He submitted that this posed a danger as it was not clear if any appliances were being used, and it was impossible to inspect the rental unit to determine if there were any safety concerns.

J.M. confirmed that they did not have hydro for a period of time because they did not pay the bill; however, they paid this on December 15, 2022, and power was restored. He advised that they did not use candles in the rental unit, nor did they cook during the period when they did not have hydro. He stated that whenever they were in the laundry room, they were doing laundry and charging their phones. However, he later contradictorily stated that there were occasions when they were in there charging their phones, but not doing any laundry.

He testified that they were only warned that living the laundry room was not acceptable in mid to late December 2022. However, with respect to the security report of December 13, 2022, he stated that he "had no idea of why [they] were being removed", but then contradictorily stated that he "kind of assumed" that it was due to their behaviours in the laundry room.

With respect to the Landlord's submissions about the condition that they were living in the rental unit, he acknowledged that the condition depicted in the pictures was accurate, that they have been taking steps to clean this up, and that the only time they were informed that this was a problem was when one of their mothers was contacted by the Landlord.

Tenant A.B. advised that they would do their laundry and charge their phones while in the laundry room, but they were not living there. She confirmed that their hydro was disconnected for approximately a month prior to them finally paying the bill on December 20, 2022. She stated that they did not hear of any complaints from any residents of the building about their activities in the laundry room, nor did they receive any warnings from the Landlord. She stated that the one picture that K.P. talked about was of her on a couch cushion, not a mattress.

With respect to the condition of the rental unit, she confirmed that the pictures that the Landlord submitted were accurate. However, they have been attempting to clean the rental unit and rectify this situation.

Analysis

Upon consideration of the evidence 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 Tenants have 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.

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Tenants had their hydro disconnected in the rental unit for approximately a month, from mid-November to mid-December 2022. While the Tenants claimed that they were not living in the laundry room, but were in there primarily to do laundry, I note that J.M. later provided contradictory testimony in which he confirmed that they would sometimes be in there to charge their phones only. This causes me to question the reliability of their submissions on the whole. Given that the Tenants had no

electricity in their rental unit for approximately a month, I find it more likely than not that the Tenants were occupying the laundry room for more than just the purposes of solely doing their laundry.

Furthermore, given the undisputed evidence of the condition of the rental unit in mid-December 2022, I am satisfied that the state with which the Tenants maintained the rental unit essentially rendered it uninhabitable. In conjunction with there not being any electricity in the rental unit, I find that this only adds to the likelihood that the Tenants occupied the laundry room for more than just a need to do their laundry.

As well, if the Tenants were truly only in the laundry room to do their laundry as they originally claimed, it is not clear to me why they did not question the security company for removing them on December 13, 2022. I do not find it reasonable or logical that the Tenants would not question why they were being removed if they were simply and truly just doing their laundry. Given this, I find it more like than not that the Tenants were not in the laundry room for the sole purpose of doing their laundry, and that they were aware that what they were also doing in the laundry room was not acceptable.

While K.P. was disorganized, ill-prepared, and had little documentary evidence to support this Application, I am satisfied that the Tenants, more likely than not, were essentially living in the laundry room because they did not have their hydro connected in the rental unit. Moreover, I am satisfied that they were aware that this behaviour was not permitted and that they would have continued to act in this manner if they were not finally removed by security.

Based on this, I am satisfied that the Tenants engaged in a pattern of behaviours that was intentional, unacceptable, and would fall into the category of significantly interfering with or unreasonably disturbing another occupant or the Landlord.

However, 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. Given that the Tenants had essentially taken up occupancy of a common area of the building, I find that it would be unreasonable and unfair to the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For this reason, 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 Tenants. Should the Tenants, 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: January 10, 2023

Residential Tenancy Branch