Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the respective applications and evidence submissions on file.

The tenant's application was filed within the time period required under the Act.

Preliminary Issue – Scope of Application and naming of parties

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do

so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the tenant's application to cancel the Notice to End Tenancy and the landlord's application requesting an order of possession based upon the same Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in both the tenant's and landlord's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

The landlord had also named the guarantor as a party to this application. The parties confirmed that F.N. is not a tenant named on the lease and agreed that he should be removed as a party to the application.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all of the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

The tenancy for this studio bachelor unit began on February 1, 2022.

On January 18, 2023, the landlord served the tenant with a One Month Notice dated January 13, 2023, with an effective date of February 28, 2023. The One Month Notice was issued on the grounds that the tenant put the landlord's property at significant risk and caused extraordinary damage to the property.

The landlord submits that the tenant's negligence in reporting a shower drain clog in a timely manner caused extraordinary damage and put the landlord's property at significant risk.

The landlord agent testified that the shower drain was badly clogged which resulted in water either overflowing over the shower pan or water not draining properly in the drain

below. As per the landlord's agent, the latter was the more likely scenario. On October 31, 2022, the building manager contacted the landlord notifying of a leak.

The landlord submitted a copy of a water damage incident report prepared by the restoration company attending to the unit following the leak. The report notes that the tenant advised the technician that the shower drain hasn't been working since he moved in. The report also notes heavy mold growth throughout the unit in the affected areas indicating the issue had been ongoing for some time. The landlord's agent submits the tenant failed to report any drainage issues to the landlord although he acknowledged to the technician the drainage issues since he moved in.

The landlord submitted a copy of a letter from its insurance company by which the landlord was denied coverage of the damage due to it being the result of a continuous leak and not an isolated incident.

The landlord submitted third party e-mail correspondence from the restoration company in which it is reported that the tenant verbally acknowledged being aware of the drainage issues since he moved in and the tenant commented that he always took short showers as a result.

The landlord submitted a damage report estimating restoration costs of up to $30,000.00 as a result of the leak.

The tenant testified that since he has lived there the only leak that happened was the incident of October 2022. He submits that the insurance and restoration agents were mistaken and he never told them the clog was present since the beginning of his tenancy. The tenant further submits that the landlord should have been responsible to check over the unit for any drainage issues before handing the unit over to him.

The tenant's advocate submits the tenant was not aware of any drainage issues for the 8 months prior to the major leak incident. The unit is 12 years old; therefore, the clogging issue could have been cause of accumulation of hair from previous occupants. The tenant is a male with short hair and the previous tenant was girl. The mold reported was in behind finished drywall behind or beside the toilet so it was not visible to the tenant. The tenant only moved to Canada recently and when he moved into the unit it was only his third day here. When the crew of restoration people attended to the leak, the tenant was overwhelmed and bombarded with questions leading him to misunderstand what was being asked.

In reply, the landlord's agent submits that the reports of the tenant's statements is being submitted from third parties and not the landlord. As much as the landlord wants to believe the tenant as it would also be in the landlord's best interest so they could have got insurance coverage, the external third parties have denied the insurance due to negligence.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

I find that the evidence submitted by the landlord that is comprised of third party insurance and restorations reports supports a finding that the tenant was aware of a shower drainage issue and failed to report it in time to the landlord. I find the restoration report is credible as it is from a third party with no stake in the outcome. I find the restoration company would not have reported that the tenant advised them he was aware of the drainage issues since move-in if this was not true. I find this was not a case of misunderstanding as the tenant also reported he takes short showers as a result of the drainage issues. I find the tenant was negligent in not reporting the drainage issues to the landlord in a timely manner. The tenant was in the unit for 8 months prior to the leak incident and should have reported the issue to the landlord during that time. I dismiss the tenant's argument that the clog could have been the result of build up from previous tenants. While this could be true, the responsibility is still on the tenant to report the issue as soon as he became aware of it. I find the tenant's negligence in reporting the drainage issues put the landlord's property at significant risk and were a contributory factor to the resulting extraordinary damage.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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: March 31, 2023

Residential Tenancy Branch