



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **ET**

Introduction

This is an application by the landlord to end the tenancy early by way of an expedited hearing and seeking;

- an order of possession for the subject residential property

The landlord attended the hearing represented by ST. The tenant DL also attended. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The hearing was conducted by conference call. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

Both parties acknowledged receiving each other's evidence packages for the hearing and no issues arose with service. Therefore, I find both parties properly served pursuant to sections 88 and 89 of the Act.

Preliminary Issue

The landlord applied for an expedited end to the tenancy. However, his application did not correctly specify that the grounds upon which he wished to end the tenancy were that the tenancy was frustrated. I find that the materials filed, as well as the evidence from both the parties show that the reason the landlord wishes to end the tenancy is because the tenancy was frustrated. I further find that the tenant was aware, based on the tenant's submissions that the reason the landlord wishes to end the tenancy is because the rental unit is uninhabitable, and the tenancy is frustrated. Therefore, pursuant to section 64(3)(c) of the Act the landlord's application is amended accordingly.

Issue(s) to be Decided

Is the landlord entitled to an order ending the tenancy early?

Background and Evidence

The tenancy commenced September 1, 2020. Rent is \$870.00 per month due on the first of the month. The landlord holds a security deposit of \$425.00 in trust for the tenant. The tenant currently occupies the rental unit.

The landlord stated that the rental unit was flooded in December 2022 after a water main burst. The rental unit is one side of a duplex. The other side of the duplex sustained the majority of the damage, however the tenant's rental unit was also affected. The landlord provided an email in evidence from a restoration specialist. This email stated that the tenant's rental unit has sustained damage and needs to be remediated as well. The remediation required to the tenant's rental unit is significant and requires that the rental unit be vacant for the period that the remediation work is being done. The landlord also provided pictures of the water damage in evidence.

The tenant testified that remediation needed to be done, however he believed the required work wasn't as significant as stated by the landlord. He stated that the restoration company did not fully and properly inspect his rental unit and therefore their opinion of the necessary work was not accurate. Therefore, he believed that the restoration work did not require the tenancy to end. The tenant also provided pictures of the damage in evidence as well as some information from Health Canada regarding remediation in the event of flooding.

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.

RTB Policy Guideline 34 states in part:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so

radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

Section 56.1 of the Act states that the landlord may make an application to end a tenancy if the rental unit is uninhabitable. Based on the evidence of the landlord, and specifically the email from the restoration company, I find that the rental unit is uninhabitable, and the landlord requires vacant possession in order to remediate the damage and make the unit liveable. The restoration company outlines significant work that needs to be done and indicates that the drywall contains asbestos, therefore the unit must be vacant for health and safety reasons for the work to be complete.

The landlord's application is granted, and the landlord is entitled to an order of possession for the rental unit.

Conclusion

The landlord is 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.

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 24, 2023

Residential Tenancy Branch