Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

The landlords applied on an expedited basis to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Exclusive possession of the rental unit in favour of the landlords.
2. Reimbursement for the $100.00 filing fee for this application.

The landlords appeared at the hearing on 19 May 2023, along with an advocate. The tenants also appeared, also with an advocate.

Issues to Decide

Would it be unreasonable or unfair to the landlords or other occupants of this rental unit to wait for a One-month Notice to End Tenancy for Cause [the 'Notice for Cause'] to take effect?

Should the tenants reimburse the landlords for the cost of filing this application?

Background and Submissions

The tenants rent a unit from the landlords. This unit [the 'Lower Unit'] is below another unit owned by the landlords [the 'Upper Unit'].

In 2021, the local municipality [the ‘City’] informed the landlords that the Lower Unit was illegal. The landlords understood from the City that if the Lower Unit did not have a stove and oven [the ‘Appliances’], then it would be legal.

As a result, the landlords removed an oven from the Lower Unit, and the landlords told me that they made a new tenancy agreement with the tenants (in 2021) that the Lower Unit would not have Appliances. They also made an agreement with the tenants that they would not cook food in the Lower Unit. Instead, the tenants would pay the Upper Unit’s tenants to cook food for them.

The Upper Unit’s tenants then fought with the Lower Unit’s tenants, and the cooking scheme ended.

The landlords told me that there was then another new tenancy agreement with the tenants in 2022, and that this again stipulated that there would be no Appliances in the Lower Unit.

Then in April this year the City learned that the tenants had Appliances in the Lower Unit, and so the City fined the landlords for an illegal rental unit. The landlords told me that the City decided to fine them each month that the Appliances remain in the Lower Unit.

The landlords said that they contacted the tenants about coming to inspect the Lower Unit (presumably to remove the Appliances), but that the tenants have refused entry to the landlords.

The relevant timeline of these developments is:

- 12 April - landlords learn that the tenants have Appliances in the Lower Unit
- 19 April - landlords file this application
- 21 April - landlords contact an insurer about insuring the Lower Unit, but are told by that insurer that they will not insure the Lower Unit, because the City deems it an illegal unit

When I asked the landlords if they contacted a different insurer to see if the Lower Unit could be insured, the landlords told me they did not: they only contacted the insurer with whom they always deal. They did confirm that the Upper Unit, however, is insured.

The landlords also told me that the tenants have not paid rent since January. The tenants conceded that some rent has not been paid because of a debt owed by the landlords to the tenants.

As a result of the unpaid rent, the landlords issued a 10-day Notice to End Tenancy [the '10-day Notice']. The landlords said that this 10-day Notice is the subject of a separate application for Dispute Resolution before the RTB, and that that the RTB will hear that application on 29 May - 10 days from now.

Neither party called any witnesses from the City who could tell me about the legality of the Lower Unit or the potential for further fines.

Analysis

I have considered all the evidence proffered by the parties. And I have considered all the arguments made by the parties.

In analysing this dispute, I reviewed Residential Tenancy Policy Guideline 51: Expedited Hearings.

This reads (in part, with emphasis that I have added):

> …a landlord may apply to end a tenancy early and obtain an order of possession if it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a notice to end tenancy to take effect under section 47 the RTA [the *Residential Tenancy Act*]… and a tenant or their guest has:
>
> - 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 interest 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,

- 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…,
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property...

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

In their submissions to me, the landlords never specified any of the bases listed above for ending the tenancy early. Rather, they said that there were two risks in permitting the tenancy to continue:

1. the City might fine the landlords because of the Appliances; and
2. if there were a fire because of the Appliances, any losses to the Lower Unit would not be covered by insurance.

It seems that the landlords argue that the Appliances put the Lower Unit at significant risk or serious jeopardy, and or that the tenants having the Appliances amounts to illegal activity that has jeopardized a right of the landlords.

I do not accept that the potential for a fine or a fire is the kind of serious or significant risk or jeopardy about which the guideline speaks. Consider:

- there was no evidence that the Appliances were faulty or otherwise extraordinary fire risks;
- there was no corroboration that the City will levy further fines; and
- the landlords did not contact any other insurers to see if the risk about which they are concerned could be insured against.

Even if I am wrong in this, what is truly crucial in this dispute is the second 'ground': would it be unfair or unreasonable to have the landlords wait for a Notice for Cause?

In considering whether it would be unreasonable to have expected the landlords to wait in these circumstances, I consider the following definition of 'unreasonable': irrational, foolish, absurd, silly, preposterous, senseless, stupid [see paragraph 38 of a decision by the Supreme Court of British Columbia: *Toronto Dominion Bank* v. *MacKenzie Apartments Inc*, 2002 BCSC 636 (CanLII)].

I do not agree that, in these circumstances, it would be preposterous or absurd to have expected the landlords and other tenants to wait for a Notice for Cause. The risk of some kind of fire resulting from the Appliances is speculative and unsupported by any evidence. The challenge of insuring the Lower Unit was met by the landlords with minimal effort. But the Upper Unit is insured. And even if the City fined the landlords while awaiting a Notice for Cause, the landlords could have pursued the amount of such a fine as part of the dispute (assuming that the tenants prevented the landlords from entering the Lower Unit to remove the Appliances).

It is also significant in the circumstances of this case that in less than two weeks the landlords will have a hearing about the 10-day Notice. If this hearing results in upholding the 10-day Notice, then typically the landlords could expect to receive an order of possession that is effective only two days after serving it upon the tenants.

I do not find it unfair or unreasonable for the landlords to have waited to pursue this matter by way of a Notice for Cause. In other words, this application is inappropriate for an expedited hearing. Mere frustration with a party (no matter how acute) does not justify an expedited application.

Conclusion

I dismiss this application without leave to re-apply.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 19 May 2023

Residential Tenancy Branch