



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPC, CNC, FF, MND, MNSD, MNR, OPT, MNDC

Introduction

This matter dealt with applications submitted by both the landlord and the tenant. The landlord in this matter seeks a monetary order for damages to the property and has issued a one month notice to end tenancy for cause. The tenant in her application seeks to cancel the notice to end tenancy for cause and both parties seek to recover the filing fee for the cost of their applications.

Both parties appeared at the hearing, which was held via teleconference. I advised both parties that I would consider any documentary evidence that had been submitted prior to the hearing, as well as their oral evidence given at the hearing, in reaching my decision.

The tenant made a preliminary objection in that she had not been served the notice of the hearing and the application for dispute resolution as required in a timely manner. The landlord's application had been filed on September 17, 2008 and the tenant was not served the documents until October 6, 2008. The landlord is required to serve the tenant within three days of the application and has not met that requirement. The tenant alleges that she was unable to properly prepare for the hearing as she did not have all of the details of the application until October 6, 2008. I advised both parties that I would consider the lack of proper service if required in my decision, if it was to become a deciding factor.

Issue(s) to be Decided

Has the landlord established that there is cause as she alleges in her notice to end tenancy of sufficient value to end the tenancy?

Has the landlord established that she is entitled to a monetary order for damages, and if so in what amount?

Background and Evidence

The landlord has alleged the tenant has caused significant damage to the rental property and as such, on September 13, 2008 served the tenant with a one month notice to end tenancy for cause, with an effective end of tenancy date of October 31, 2008. The tenant has filed to cancel that notice. The burden of proof falls upon the landlord to prove the cause as they have stated in their notice. I note that the landlord has failed to supply a copy of the notice that they rely upon as evidence, so I will copy from the copy submitted by the tenant as evidence. The notice on page 2, lists the following reasons:

Tenant or a person permitted on the property by the tenant has:

-put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

-damage the landlord's property

Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

The landlord has provided as evidence a letter dated September 4, 2008, in which she details repairs that the tenant is required to complete no later than September 18, 2008.

This letter was based upon an inspection the landlord carried out an inspection on September 3, 2008.

The repairs the landlord required to be done are as follows:

- (a) repair master bedroom door frame
- (b) fix hole in dry wall (later stated to be in garage)
- (c) the front door must be replaced (landlord's admits that the tenant did not cause the damage in the letter)
- (d) repair the backyard grass from dog damage
- (e) replace set of steps that had been moved
- (f) pots on staircase must be moved.

The letter also makes comments in regards to the tenant's dog and access to the electrical panel. The landlord then issued another letter to the tenant on September 8, 2008 saying that the tenant had until September 25, 2008 to complete the repairs.

The landlord at the hearing also alleged damage to the master bedroom carpet, although there is no mention of it in the letters to the tenant. The landlord submitted a summary of damage compensation which totals \$12,700.00. This summary was not accompanied by any estimates and breaks down as follows:

- (a) garage damage \$4700.00
- (b) garden damage \$2000.00
- (c) carpet damage \$2500.00
- (d) bedroom door \$1000.00
- (e) front door \$1000.00
- (f) fire exit stairs \$1500.00

At the hearing, the landlord admitted that she gave the tenant a period of time to complete the repairs, and that she then gave the tenant the notice to end tenancy prior to the expiry of that allotted time period. The landlord also states that she has not re-

inspected the premises to see if the required work had been done, and as such is not aware that the repairs may have indeed been completed.

The landlord's evidence in support of the allegation of illegal activity is that the tenant was repairing bicycles in the garage. The tenant states that her ex-spouse did some bike repairs, but that it was at no time a business.

The landlord was unable to provide me with any specifics of the work that had to be done when I requested more details. The landlord was not able to tell me what repairs had to be done in the garage, when the only item she had listed to the tenant was a hole in the drywall. This was quoted as a \$4700.00 repair.

The tenant at the hearing advised that she has repaired the master bedroom door moulding as required and that she is not responsible for the damage to the front door. The tenant also advises that she has purchased grass seed and is willing to seed the lawn in order to make repairs. The tenant stated that it was unclear from the letter what steps the landlord was referring to and I note that landlord admitted that she had referred to the wrong set of steps. The tenant also stated that the hole in the drywall had been repaired as requested.

The tenant also denies any damage to the master bedroom carpet and states that she only smokes outside. The tenant also states that there was no condition inspection report done on the rental unit when she moved in, and as such she can not be held responsible for existing damage.

The landlord at the hearing has requested an order of possession and an end to the tenancy.

Analysis

I find that the landlord's evidence is scant at best. The landlord admittedly gave the tenant a period of time to complete repairs that she alleges the tenant is responsible for. The landlord has done no follow up to see if the tenant has complied, and instead has

attempted to have the tenancy ended by way of an order of possession. If a landlord expects a tenant to complete repairs, they carry an obligation to determine if the repairs have been done before attempting to use that alleged failure to end a tenancy. The tenant has given evidence at the hearing that some of the repairs have indeed been completed and that the landlord was notified of this in writing on September 18, 2008. The landlord has chosen not to attempt any verification of the tenant's claim and I find that such inaction by the landlord is unacceptable. I find that the landlord has not proven that the tenant has not completed the required repairs and deny that part of the notice for cause.

The landlord has alleged that the tenant has engaged in illegal activity that has or is likely to damage the landlord's property. The landlord has provided absolutely no evidence of any illegal activity. The repairing of a few bicycles, as alleged, falls severely short of any proof of illegal activity. I find that the landlord has not proven any illegal activity and I deny that part of the notice for cause.

The landlord alleges that the actions of the tenant's have out the landlord's property at significant risk. The landlord has not presented any evidence of what the alleged actions of the tenant where, and what the significant risk is. I deny that part of the notice for cause as issued by the landlord.

The landlord's other grounds are the tenant has caused extraordinary damage to the property. The landlord has not provided me with evidence of what the extraordinary damage may be that she is alleging. The landlord has given me a summary of repairs totalling \$12,700 with few details as to what damage has occurred. I also find the value of the repairs to be highly inflated and unsubstantiated. The garage repairs are stated at \$4700.00 but in her letter to the tenant the landlord only refers to a hole in the gyproc in relation to the garage. I quote as a further example the alleged \$1000.00 to repair an interior door frame is a prime example of an attempt to make the repairs seem much more than they are. A further example is that of the master bedroom carpet. The landlord has not included that item in her letter to the tenant of items requiring repairs, but later includes it in seeking damage compensation. The tenant has denied causing such damage. It is not enough to allege that the rental unit may indeed need repairs, the burden lies upon the landlord to prove that they were directly caused by or permitted by

the tenant and that they are significant. While the dollar value of the repairs as submitted by the landlord is high, when the actual costs of repairing the stated items is examined I find they would be much less. I find that the landlord has failed to prove the alleged damages were done by or permitted by the tenant and that the damage is as significant as the over inflated estimate may make them appear to be. I find that the landlord has not proven that the tenant has caused significant damage to the rental unit as alleged in the notice for cause.

I find that the landlord's claims for monetary damage have not been proven. The submitted summary appears significantly inflated and the landlord has not drawn a direct link to the tenant as being responsible. The only item I find some merit is that of the lawn damage which was included in the landlord's list of items the tenant was given time to repair. The tenant has agreed to re-seed portion of the lawn, but the evidence before me is that parts of the lawn not used by the tenants or her dog are also in poor condition. The tenant can not be expected to repair the lawn within to weeks, as nature must take its course after it has been seeded.

I find that based upon my reasons above that I am not required to make a determination as to the failure of the landlord to properly serve the tenant as required. I have not considered that alleged failure as forming any part of the basis of my decision.

Conclusion

I find that the landlord has failed to prove that they have sufficient cause as stated in the notice to end tenancy for cause issued on September 13, 2008. I therefore cancel the notice and order that the tenancy is to continue.

I further find that the landlord has failed to substantiate their claim for damages and I deny their request for a monetary order or to retain any or all part of the security deposit. I also deny the landlord's request for an order for return of the filing fee.

I find that the tenant's application is successful in cancelling the notice to end tenancy and as such I award the tenant the costs of \$50.00 for the filing of this application. The tenant is entitled to deduct the amount of \$50.00 from their next month's rent.

Dated: October 15, 2008