



Dispute Resolution Services

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

Decision

Dispute Codes: CNC FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause, as well as recovery of the filing fee for the cost of their application.

Issue(s) to be Decided

- Should the notice to end tenancy be cancelled?
- Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on June 1, 2003. On October 18, 2008 the landlords served the tenants with a one month notice to end tenancy for cause, citing reasons for ending the tenancy as follows: (1) the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right of the landlord; (2) the tenant has caused extraordinary damage to the unit; and (3) the tenant has not done required repairs of damage to the unit.

The landlord's evidence on the notice was as follows. The landlords are required under a local bylaw to conduct inspections on the rental unit every three months. The landlords gave the tenants proper advance notice of their intention to conduct inspections but the tenants refused to allow the landlords entry on January 11, 2007, January 16, 2007, February 1, 2008, August 16, 2008 and October 18, 2008. The landlords were able to gain entry for inspections on February 23, 2008, March 4, 2008, April 18, 2008 and May 17, 2008, but on each of these occasions the tenants made entry difficult by asking for different times, insisting on written notice and limiting the

time of the landlords' entry.

On the inspection of February 23, 2008 the landlords noted that the tenants had removed a workbench and installing modified flooring in the garage without the landlords' permission. The tenants had also damaged the garage walls with large holes in the gyproc and black marks from hockey pucks. The tenants had created extraordinary clutter in the basement with stored items including 10 bikes. The tenants had also allowed mold to grow on the windows, failed to keep the carpets clean, caused burn marks on the kitchen floor, wrote names and phone numbers on the kitchen wall, caused rotting of the bathroom floor and removed a handrail. On March 19, 2008 the landlords emailed the tenants and insisted that the tenants completely repair the garage interior and return it to its original condition. The tenants did not appear to have repaired any of the outstanding problems when the landlords inspected on May 17, 2008. The landlords have been unable since that date to gain access to the rental unit to inspect.

The response of the tenants was as follows. The tenants provided photographs to illustrate several repairs that the tenants have conducted on the rental unit, including replacement of the handrail. The tenants submitted that the damage to the bathroom floor was caused by the previous tenant. In regard to the garage, the tenants acknowledge that they have modified the garage for training purposes for their children, who are involved in competitive speed skating. The tenants deny using the garage for hockey. In regard to denying the landlords entry, the tenants stated that the landlords want to do condition inspections all the time, and it is unreasonable for the landlords to show up to do inspections or repairs every month. The tenants believe that the landlords are acting in bad faith, and that they only want to evict the tenants so that they can get a higher rent

Analysis

I find that the landlords have failed to provide sufficient evidence to establish cause to end the tenancy on any of the three grounds cited. The landlords have not provided

sufficient evidence to establish that the tenants have caused extraordinary damage. In regard to repairs by the tenants, I am not satisfied that any of the items listed were either the tenants' responsibility to repair or were in such a hazardous or unsafe condition that the tenants' failure to repair them would warrant termination of the tenancy. In regard to the tenants' refusal to permit the landlord entry, the landlords have not established that the tenants' actions in this regard amounted to illegal activity.

I note that the landlords do have the right to conduct inspections or attend at the rental unit for other reasonable purposes as long as they issue proper notice. Had the landlords claimed another cause for ending the tenancy, or provided other relevant evidence, I may have found that the landlord did have cause to end the tenancy.

Conclusion

The notice to end tenancy for cause is cancelled, with the effect that the tenancy continues.

The tenants are entitled to recovery of their \$50 filing fee, which they may deduct from next month's rent.

Dated: November 20, 2008.