



Dispute Resolution Services

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

Decision

Dispute Codes: CNL, MNDC, OLC, RP, RR

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property; a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; Orders for the landlord to comply with the Act, regulations or tenancy agreement and make repairs; and, authorization for a rent reduction. Both parties were adequately represented during the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether there are grounds to cancel the Notice to End Tenancy or can the parties reach a mutual agreement to end the tenancy.
2. Whether the tenant is entitled to a rent reduction or monetary compensation for damage or loss under the Act, regulations or tenancy agreement.
3. Applicable orders to the landlord for repairs or compliance, if any.

Background and Evidence

I heard undisputed testimony that the tenant asked to view the rental unit in September 2008. The tenant moved in October 9, 2008. There is no written tenancy agreement. The tenant pays rent of \$550.00 per month. The landlords served the tenant with a 2 *Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) by registered mail on January 15, 2009. The tenant received the registered mail on January 20, 2009. The effective date on the Notice is March 31, 2009 and indicates that the

landlord, landlord's spouse or close family member of the landlord will occupy the rental unit. By way of this application the tenant disputed the Notice.

The landlords testified that they need to occupy the rental unit for their own use as they are a family of four living in a 2 bedroom, 1 bathroom unit upstairs from the rental unit and their children are constantly fighting. The landlords testified that for approximately 8 months prior to the tenancy commencing they had been using the rental unit for their own use.

The tenant called into question the landlords' good faith intention to use the rental unit for their own use and alleged that the landlords were trying to end the tenancy because the tenant complained about fleas and a leaking toilet.

The tenant claimed that the rental unit has been infested with fleas and that the toilet leaks. The tenant testified that she and her son have been bitten by fleas and that the toilet leak causes the bathroom floor to become slippery and dirty. The landlords testified that in response to the tenant's complaint of fleas in the rental unit, the landlord's had their pets put on a flea program, reimbursed the tenant for flea spray and paid for an exterminator to fumigate the rental unit. With respect to the toilet, the landlords testified that the toilet wobbles slightly due to an uneven floor and that the water on the floor is very minimal from condensation.

After much discussion and enquiry, the parties mutually agreed to end the tenancy as of April 30, 2009 and the tenant would be compensated the equivalent of one month's rent.

Analysis

I accept the mutual agreement reached between the parties with respect to ending the tenancy. I record the agreement as follows and make it legally binding upon both parties:

1. By way of mutual agreement between the tenant and landlords, the tenancy shall end on April 30, 2009 and the tenant must vacate the rental unit by that date.
2. The tenant shall be compensated the equivalent of one month's rent. The tenant is authorized to withhold rent payable on April 1, 2009 in satisfaction of this agreement for compensation.

From the evidence before me, I found that the landlords acted reasonably in responding to the tenant's complaints about fleas. I have not been satisfied that the rental unit remains infested with fleas. With respect to the leaking toilet, the tenant failed to provide sufficient evidence to establish that there is a health or safety hazard as I have insufficient evidence of the extent of the water on the floor or the location of the water accumulation. Therefore, I do not provide the tenant with any monetary compensation for fleas or a leaking toilet. Without sufficient evidence of an ongoing flea infestation or the extent of the water leaking on the bathroom floor, and since the tenancy is ending in a short time, I do not make any Orders for repairs against the landlords. Therefore, the remainder of the tenant's application is dismissed without leave to reapply.

Conclusion

The tenancy will end by mutual agreement on April 30, 2009 at which time the tenant must vacate the rental unit. The tenant is entitled to one month's compensation and

may withhold rent payable for April 2009. The remainder of the tenant's application is dismissed without leave to reapply.

February 17, 2009

Date of Decision

Dispute Resolution Officer