



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 the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice) and recover the filing fee. Both parties appeared at 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 set aside and cancel the Notice.
2. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following findings. The tenancy began November 1, 2006. The landlord personally served the tenant with the Notice to End Tenancy on January 18, 2009. The Notice has an effective date of February 28, 2009 and indicates the reasons for ending the tenancy are:

- tenant or a person permitted on the property 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; and,
- tenant has caused extraordinary damage to the unit or property.

The landlord testified that the rental unit is one-half of a duplex with an unheated 2.5' crawlspace. The landlord owns both sides of the duplex and both sides have older aluminum windows that are prone to sweating. Mould has appeared on the walls and windows of the tenant's unit; however, the adjacent unit is free of mould. The landlord attributes the mould in the rental unit to the tenant's actions. The landlord claims the tenant has sealed up the vents for the crawlspace, had a marijuana plant growing in the closet of one of the bedrooms, under a light, and did not wipe the condensation off the windows often enough. The landlord testified that in the summer of 2008 the tenant pointed out mould growing on a bedroom wall. The landlord cleaned the windows and wiped the mould off the walls with bleach. The landlord also noticed the remnants of tape around the crawlspace vents. The tenant complained of mould again in December 2008. In January 2009 the landlord inspected the unit and found the mould growth more severe and the crawl space vents were sealed up with plastic and tape.

As evidence, the landlord provided photographs of the rental unit taken in January 2009 that showed mould on the walls and windows and the crawlspace vents sealed with some sort of insulating material, plastic and tape. The evidence also includes excerpts from the BC Building Code which provides the unheated crawl spaces must be ventilated by natural means by outside air that is unobstructed. The landlord claims that the during wet weather, the crawlspace becomes wet and if the vents are sealed the moisture has nowhere to escape except into the dwelling.

The tenant testified that there has been mould on the windows from the time his tenancy started. The tenant claimed that he washes the mould off the windows 2 – 3 times per year. The tenant explained that mould started appearing in one bedroom in June 2008 and then proceeded to the two other bedrooms. The tenant contends that the carpets are approximately 25 years old and that the dust that has accumulated in

the carpet has contributed to the growth of mould. The tenant disputed the landlord's claims that the crawlspace is wet in the winter.

The tenant admitted that he sealed the crawlspace on December 15, 2008 but denied that he has ever sealed up the vents previously. The tenant alleged that it cannot be proven that he sealed up the vents previously since the exterior of the building was not included in the move-in inspection. The tenant explained that he sealed up the crawlspace in December 2008 as it was extremely cold outside and he was trying to protect the pipes from freezing and provide more heat to the inside of the house. The tenant denied that he had grown a marijuana plant in the closet but admitted that he had been growing two tomato plants in the closet and that nobody could prove otherwise.

The tenant claimed that he had a mould investigation conducted on the rental unit and requested an adjournment in order to provide the report. The adjournment request was not granted; however, the tenant was provided ample opportunity to read from the report and his testimony would be included as part of his evidence for the hearing. The tenant provided that the report attributes the growth of mould to inadequate venting in the attic, inadequate venting in the bathroom, and excessive moisture content in the walls beneath the windows.

The landlord responded to the findings of the report by stating that the house met the building standards at the time it was built and a bathroom fan was not required at that time. The landlord has installed a bathroom fan to improve ventilation. Moisture in the walls is already evident by the mould growth.

Analysis

Where a tenant disputes a Notice to End Tenancy for cause, the burden is upon the landlord to prove, on the balance of probabilities, that the tenant has acted in such a way as to warrant ending the tenancy for one of the reasons provided under section 47

of the Act. A balance of probabilities means that the landlord has established that it is more than 50% likely that the event occurred as stated by the landlord.

Many factors may encourage the growth of mould and it is possible that more than one factor has contributed to the mould growth in this unit. I accept the tenant's submission that the attic and bathroom is not vented to today's construction standards; however, the extent that the attic and bathroom contribute to the growth of mould appears to be less significant since the adjacent rental unit is not suffering from mould issues despite being in the same building. Therefore, it would appear more likely that other factors, such as actions of the tenant, have encouraged the growth of mould in the rental unit.

In this case, I have undisputed evidence that the tenant had sealed up the crawlspace vents in December 2008 and had grown plants in the closet. Since the growth of mould began in June 2008 I find it important to determine whether the tenant's actions caused or encouraged the growth of mould prior to taping up the crawlspace in December 2008. The landlord alleged that the tenant had taped up the crawlspace vents previous to December 2008, which was evident from remnants of tape sighted by the landlord in the summer of 2008. The tenant did not deny that there were remnants of tape on the siding of the house but denied it was him who had previously sealed the crawlspace.

Upon hearing the testimony of both parties, I have found the credibility of the tenant to be highly questionable. The tenant had denied having marijuana plants in the closet. The tenant's defense appeared to hinge on the landlord's ability to prove the plant was marijuana; however, as stated above, the standard of proof is based on the balance of probabilities and is not the same standard of proof required in criminal proceedings which is beyond a reasonable doubt. I find it unlikely that the tenant was growing tomatoes in the closet and considering that the tenant did not deny he smokes marijuana, I preferred the testimony of the landlord with respect to the marijuana plant growing in the closet. The tenant had taken a similar position with respect to the

remnants of tape appearing on the crawlspace vents in that the tenant stated that nobody could prove he had taped up the vents previously. Yet, the remnants of tape seen in the summer would appear consistent with how the tenant sealed up the crawlspace in December 2008. With the tenant's credibility in question, and the lack of mould growing in the adjacent unit, I prefer the landlord's position that the tenant likely sealed up the vents the previous winter as well, which caused mould to grow in the rental unit.

In light of the above, I find the landlord has met the burden of proof, on the balance of probabilities, in establishing that the tenant has caused damage to the landlord's property by sealing up the crawlspace vents and failing to minimize the growth of mould on the windows and walls. Therefore, I uphold the Notice to End Tenancy. In accordance with the effective date on the Notice, the tenancy ended February 28, 2009 and since the tenant remains in the rental unit the tenant is over-holding and must vacate immediately.

I make no award to the tenant for the filing fee paid for this application.

Conclusion

I uphold the Notice to End Tenancy. As the tenancy has ended, the tenant must vacate the rental unit immediately.

March 10, 2009

Date of Decision

Dispute Resolution Officer