



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application to end the tenancy for cause due to noise complaints from the tenant below the dispute address.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession to end the tenancy for cause; to a monetary Order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord's agent submitted into evidence:

- A copy of a residential tenancy agreement which was signed by the parties on April 26, 2005 for a fixed term tenancy beginning May 15, 2005 that converted to a month to month tenancy as of November 30, 2005 for the monthly rent of \$805.00 due on the 1st of the month and a security deposit of \$402.50 was paid on April 26, 2009. Current rent is \$875.00;
- A copy of 1 Month Notice to End Tenancy for Cause dated August 10, 2009 citing the respondent significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant has engaged in an illegal activity that has adversely affected the quiet enjoyment, security, or physical well-being of another occupant or the landlord; and
- A copy of a handwritten letter outlining the complaint from the tenant directly below the disputed rental unit.

The landlord's witness provided verbal testimony confirming the complaint submitted in writing indicating that since she moved into the unit in July 2009 the respondent was constantly walking around in high heels – back and forth; dropping things. The respondent had indicated that the tenant below had also been banging the ceiling of her unit (floor of the respondent's unit) when she was being disturbed.

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The witness indicated that she had complained to management as well as directly to the respondent and they agreed that this tenant would let the respondent know if she was being disturbed.

The respondent indicated that she had lived in the unit for 4 years and never once received a complaint. This was confirmed by the landlord's agent. The respondent suggested that part of the issue may have resulted from the landlord replacing some carpet in her unit with linoleum tiles in June and the needs of the new tenant below to have complete quiet.

The landlord's agent indicated that the building is 15 years old of wooden construction and that the carpets in the disputed rental unit are original to the building. The respondent also testified that the previous building manager had promised replacement carpets when she moved in. There was no corroborating evidence of such a commitment.

The landlord's agent stated that replacement carpets are only installed in vacant units and as such would not replace the carpet in the respondent's unit, while she was living there. The respondent volunteered to stay at relatives during an installation, if required.

The respondent indicated that the landlord's agent had suggested that respondent could move to another unit but she felt that she should not have to move as she has been in this unit for 4 years and felt it was her home. The landlord also confirmed that the same offer had been made to the tenant below, who also refused.

There is also a supplementary issue related to this tenancy that was raised in this hearing regarding the respondent having a pet in the unit while she had initialed the pet clause in the tenancy agreement agreeing to not having a pet. I provide no findings on this issue but encourage the respondent and the landlord's agent to resolve that issue separately.

I document the pet issue in this decision as it relates to the landlord's agent's statement that replacement carpets would not be installed for units that have cats.

Analysis

The landlord's application suggests that the respondent has significantly interfered with or unreasonably disturbed another occupant, while this may in fact be true, I am not convinced that it is through any actions, deliberate or otherwise, on behalf of the respondent.

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With no other complaints in 4 years and the only two other conditions that have changed are the loss of carpet in the hallways and kitchen of her rental unit and a new tenant in the unit below the tenant can not be held responsible.

The landlord's application also indicated that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant. No evidence was presented of any illegal activity or subsequent disturbances related to such an activity.

The fact both parties are reluctant to move from their respective units is moot, in that the issue may not resolve with different tenants as the flooring in the disputed unit may continue to contribute to noise problems between tenants in the future.

Section 32 of the Act requires that the landlord must maintain a property in a state of repair that, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant and that a tenant is not required to make repairs for reasonable wear and tear.

Residential Tenancy Policy Guidelines provide a useful live expectancy for work done or fixtures in residential properties. The Guidelines state that the useful live of carpeting is 10 years. Since replacement carpets would be appropriate by virtue of their age and these issues did not appear to occur prior to the removal of the previous carpet, I find that replacing carpets would be a reasonable solution.

Conclusion

Based on my findings above I dismiss the landlord's application to End the Tenancy for Cause. I further order the landlord to replace the flooring in the areas previously carpeted and any carpets remaining with a dense underlay and carpeting.

Since the landlord was unsuccessful in their application to end the tenancy I dismiss the application to recover the filing fee for this application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 06, 2009.

Dispute Resolution Officer