



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the conference call hearing, and an agent for the company landlord also attended. Each of the parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence. All evidence provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the tenant entitled to an order cancelling a 1 Month Notice to End Tenancy for Cause?

Background and Evidence

The parties testified that the rental unit is a suite in a condominium complex. The fixed-term tenancy began on December 15, 2009 and expires on December 31, 2010. Rent in the amount of \$950.00 is payable in advance on the 1st day of each month, and there are no rental arrears. On December 11, 2009 the landlord collected from the tenant a security deposit in the amount of \$475.00 as well as a pet damage deposit in the amount of \$475.00. The unit is presently listed for sale.

The landlord's agent testified that in mid-June, 2010 she inspected the property after a realtor had told her there were problems selling the unit due to significant dents in the hardwood floors. She spoke to the tenant and her mother stating that the owner would want to rectify the floor damage, the majority of which was around the kitchen area.

The landlord's agent further testified that on June 30, 2010 she delivered a letter to the tenant personally. A copy of that letter was provided by the tenant in advance of the hearing and it is entitled "Notice to Correct Breach of Tenancy Agreement" and states that the owner feels the damage to the hardwood floor is impacting the sale of the home and requests that the issue be rectified by the tenant within 30 days by refinishing or replacing the floor, failing which a 1 Month Notice to End Tenancy for Cause would be issued.

On July 5, 2010 the landlord's agent received a letter from the tenant's mother disputing that the damage was caused by the tenant, and was likely the result of realtors and their clients. However, the landlord's agent did not hear from the tenant and issued a 1 Month Notice to End Tenancy on July 30, 2010 which was posted to the door of the residence on the same day. A copy of that notice was provided in advance of the hearing and shows an expected date of vacancy to be August 31, 2010, and states that the tenant has caused extraordinary damage to the unit and the tenant has not done the required repairs of damage to the unit.

The landlord's agent testified that she created a form and had it distributed to all realtors who had shown the unit, asked them to complete the form and return it. The form contains places for the realtors to write the date the property was shown, whether or not any clients or realtors were wearing high heels, whether or not they removed their shoes prior to walking through the suite, whether or not the realtor or the clients noticed any indentations in the hardwood flooring, and a spot to add any other notes or comments. Several forms were returned completed, or partially completed by the realtors, some of whom did not notice the damage or could not remember, and some of whom believed the damage was caused by the tenant's dog.

The landlord's agent stated that an estimate to repair the floor by sanding and finishing it, including taxes will cost \$2,000.88. An estimate to replace the floor would cost \$5,824.00 including taxes.

The tenant testified that when the inspection was done in May the landlord told the tenant not to wear heels in the house. The tenant went on vacation in April for about 10 days. While on vacation, her mother was called when showings were to take place, and several showings of the unit took place with realtors during that time. The tenant didn't notice the dents in the floor when she left but upon her return on April 23, 2010 she noticed the dents but did not tell the landlord right away.

The tenant also testified that she does wear high heels to work sometimes, but upon returning home, her priority is to remove the shoes because working in them all day is not particularly comfortable.

The tenant further testified that the landlord did not do monthly inspections, and some of the dents were present when she rented the unit. She feels that any additional dents were caused by realtors, or it was normal wear and tear. The property is still listed for sale.

A copy of the move-in condition inspection report was also provided in advance of the hearing, and it contains comments of small slight dents in the floor of the kitchen.

Analysis

The *Residential Tenancy Act* states that the landlord may issue a notice to end the tenancy for cause if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property. The *Act* also requires that the notice must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and must be the day before the day in the month that rent is payable under the tenancy agreement. The notice was posted to the door of the residence, and pursuant to Section 88 of the *Act*, it is deemed

to be served 3 days after such posting, which in this case would be August 2, 2010, and therefore the expected date of vacancy would be September 30, 2010.

Further, I find that although the dents in the floor appear to be caused by heel pins from high-heeled shoes, I cannot find that the tenant can be held totally responsible. The house was shown several times by realtors, and at least some of the dents were present at move-in. Further, the forms completed by the realtors contain contradictory opinions of whether or not the dents were noticeable or how they may have been caused.

I find that the landlord has failed to establish that the damage to the flooring was caused by the tenant or her dog. There is no clear evidence that the tenant wore shoes that would cause the damage, several people were in and out of the unit on many occasions for real estate showings, and I accept the evidence of the tenant that when she arrives home after wearing heels, she takes them off for comfort in her home.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause is hereby cancelled.

Since the tenant has been successful with her claim, the tenant is entitled to recovery of the filing fee for the cost of this application, and I order that the tenant be permitted to deduct \$50.00 from her next month's rent as compensation.

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 22, 2010.

Dispute Resolution Officer