



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, RP, CNC

Introduction

This hearing was originally scheduled for 1:30 p.m. on May 24, 2011; however, due to a technical issue I was connected with the parties in the conference call which resulted in a decision being issued on that date. The decision issued May 24, 2011 under this same file number is replaced by this decision.

The hearing was re-scheduled for 3:00 p.m. on May 26, 2011 and both landlords and one co-tenant appeared at the re-scheduled hearing. The co-tenant in attendance confirmed the other co-tenant was aware of this proceeding and that he would represent both co-tenants.

The tenant had applied to cancel a Notice to End Tenancy for Cause, and more time to dispute the Notice, as well as a request for repair orders. I determined that the tenant had filed to dispute the Notice to End Tenancy within the required amount of time and that it was not necessary to request more time to dispute the Notice. I also determined that I would deal with only one issue identified by the tenant on his application. For disputes to be combined on an application they must be sufficiently related. I did not find the request to cancel a Notice to End Tenancy for Cause and the tenant's request for repair orders to be sufficiently related. Therefore, I dealt with the tenant's request to cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

I determined that the landlords received the tenant's application and evidence. Accordingly, I have considered the tenant's evidence in making this decision.

The landlords testified and provided evidence with respect to service of their evidence package upon the tenants. The landlords' proof of service indicates that Canada Post left two notices of attempted delivery, the first time being May 11, 2011 and the second time being May 16, 2011 and that the registered mail remains unclaimed. The tenant stated that he had not received any notices of registered mail. The landlords confirmed that the address they used to serve the evidence was the rental unit.

Section 90 of the Act provides that a person is deemed served five days after mailing even if the registered mail is not picked up or accepted. I was satisfied that the landlords mailed their evidence package to the tenants in a manner that complies with the Act and I found the tenants sufficiently served. Accordingly, I have considered the landlords' evidence in making this decision.

Given the fact the tenants had not retrieved the registered mail before the hearing I requested the landlords present their case with detailed reference and description of the evidence upon which they were relying in order to provide the tenant a fair opportunity to respond. The landlords also verbally provided the tenant with the registered mail tracking numbers and location of the postal facility so as to assist the tenant in retrieving the registered mail after the teleconference call ended.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The female tenant entered into a tenancy agreement with the landlords starting September 1, 2003. In August 2009 the female tenant and the male tenant signed a new tenancy agreement to reflect two co-tenants and a child occupying the rental unit. The monthly rent is currently \$940.00 due on the 1st day of every month.

On March 21, 2011 the tenant gave a written request for repairs to the landlords' agent and indicated a deadline of April 4, 2011. The landlords completed some of the repairs requested and gave the tenants a letter dated April 5, 2011 requiring the tenants to clean and repair several items by April 13, 2011 and provide the landlords with keys for the lock by April 7, 2011. The tenant provided a key to the landlords by April 7, 2011.

The landlords returned to the unit to inspect it and found that the tenant performed some of the required tasks but not all of them. On April 15, 2011 the landlords personally served the male tenant with a 1 Month Notice to End Tenancy for Cause (the Notice). The Notice has an effective date of May 31, 2011 and indicates the reasons for ending the tenancy are because:

- The tenant has not done required repairs of damage to the unit or property; and,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlords submitted that in responding to the tenant's request for repairs they found the unit very dirty and unsanitary, as well as certain items damaged. The landlords took pictures of the rental unit on April 4, 2011. After providing the tenant the opportunity to clean and repair the unit the landlords took photographs of the unit on April 15, 2011. Both sets of photographs were provided as evidence by the landlords for this proceeding.

The landlords also submitted a letter written by a person hired to do some maintenance work in the unit. The maintenance person submitted the fridge was so dirty that it would not run, the bedroom smelled strongly of nicotine and had to be primed before it could be painted, and tiling work could not be performed because it was difficult to schedule a time with the tenant and the tenant had changed the locks. A maintenance person hired to repair the front door also provided a written statement that was submitted into evidence.

The landlords submitted that in addition to not keeping the rental unit clean and repairing damage as required by the Act, the tenant is in breach of clause 14 of the tenancy agreement.

During the hearing I heard over two hours of testimony from the parties with respect to the condition of the rental unit. I have summarized the party's respective positions below.

The landlords testified that the tenant failed to clean the walls, window tracks, kitchen appliances, bathroom, carpets, floors, and remove junk from the back yard. In addition, the tenant failed to repair a bent window screen, broken closet doors, holes in the walls, broken door frame, and replace a missing light fixture.

The tenants responded to the landlords claims and evidence as follows:

- The landlords issued the Notice in retaliation for the tenant's request for repairs.
- The landlord's requirements to clean all of the walls in the three bedroom unit, among the other things they expected him to do, was unreasonable to complete in the time he was given. The tenant also submitted that the walls had been painted with an inferior paint that makes cleaning difficult.
- The tenant cleans the carpets semi-annually with his own Bissell cleaner.
- The items in the backyard are items he uses or is saving for the future and is not junk. The tenant tidied up these items.
- The holes in the wall are very small, from tacks used to hang his child's art, and can be filled very easily and quickly.

- The closet doors came off the tracks due to normal wear and tear over several years of use.
- The painter had to prime the walls because of filler applied to holes.
- The fridge stopped working because of a power outage and because a pea got stuck in one of the lines.
- The maintenance person was the one who had scheduling difficulties, not the tenant.
- The front door was always tight at the top and the repair person screwed pieces back together. The tenant had reported the issue with the front door to the landlord many times.
- The missing light fixture was from the 1970's but all other fixtures are fine.
- A leak under the sink has caused mould to form and it is not an accumulation of dirt.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for one of the reasons indicated on the Notice. Where more than one reason is indicated on the Notice, the tenancy may end if only one of the reasons is proven. In this case, there were two reasons indicated on the Notice and below I have considered each of the reasons separately.

Breach of a material term

The landlords pointed to clause 14 as the material term that the tenant has breached. Clause 14 of the tenancy agreement provides for acceptable use of the rental unit. The clause precludes the tenant from making structural changes to the property and requires the tenant to seek the landlord's permission to paint, paper or decorate among other things. It also requires the tenant to use hooks, nails, tapes, or other devices for hanging pictures or affixing anything to the rental unit with the type approved by the landlord and with the landlord's permission.

The Act provides that a landlord may end a tenancy for a breach of a material term of the tenancy agreement under section 47(h). In order to end the tenancy under section 47(h) the landlord must meet a two part test. The first test is that that the term that was breached was a material term. A material term is a term that is so significant that it goes to the root of the tenancy agreement and that even the slightest breach would be grounds for ending the tenancy.

In this case, I did not hear that the tenant made any structural changes to the rental unit which I find would be significant and likely a material term. However, in considering the requirements of clause 14, I find the only evidence of a breach of this term pertains to the numerous holes in the walls from hanging decorations and art.

As outlined in Residential Tenancy Policy Guideline 1, most tenants put up pictures in their unit and I find it reasonable that landlords should expected this. I do not find evidence that he landlord provided specific instructions to the tenant as to the type of approved picture hangers. Further, the landlord has been in the rental unit at various times during the tenancy and I do not find evidence the landlord instructed the tenant to use a specific type of picture hanger. Therefore, I find the landlords have failed to provide sufficient evidence that decorating and picture hanging methods were a material term of the tenancy agreement.

In light of the above, I find insufficient evidence that the tenancy should end for breach of a material term of the tenancy agreement.

Failure to repair damage

Section 47(g) of the Act permits that a landlord may end the tenancy where a tenant has not repaired damage to the property, as required by section 32 of the Act, within a reasonable time.

Section 32 of the Act provides for landlord and tenant responsibilities with respect to repairing and maintaining the rental unit. This dispute pertains to the tenant's responsibilities to repair and maintain the rental unit. Accordingly, I have reproduced the pertinent portions of section 32 below.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Upon review of the letter written by the former maintenance person I note that her statement pertains to other issues other than cleanliness. For example, she speaks of the people entering the unit that make her nervous and noise disturbances. The landlords also attempted to raise other issues during the hearing. However, as I stated

during the hearing, other issues are not before me and I have considered only the issues pertaining to damage and cleanliness.

With respect to the witness' written statement I have considered the following:

- The witness and the tenant gave different reasons for the fridge not working and there was no statement provided by the repairman as to the reason it stopped working.
- The witness described nicotine stains and the smell of cigarette smoke yet the tenancy agreement does not preclude smoking in the rental unit.
- The witness and tenant gave different versions of events with respect to scheduling tiling work. The witness was not in attendance at the hearing to respond to the tenant's version of events.

With respect to the wall damage, I accept that there are numerous small holes from hanging posters in the child's bedroom and in keeping with Residential Tenancy Policy Guideline 1, numerous holes constitutes damage. I also find, from the photographic evidence presented to me, that there are although holes and gouges in the wall that would require repair by the tenant. This type of damage does not pose a significant risk to the property and I find it reasonable to conclude that this damage may be repaired by the tenant at the end of the tenancy or upon being notified that the landlord intends to paint the walls.

With respect to the broken door frame, upon review of the photographs and upon hearing from the parties, I find it more likely than not that the tenants are responsible for repairing the door frame. However, I have heard that the door is functional at this time and I make no further order to the tenants for its repair at this time. Rather, the tenants may be held responsible for the damage at the end of the tenancy or if the door becomes non-functional in the future.

Based upon the verbal testimony before me, I accept that the missing light cover was very old and likely older than 15 years. Based upon Residential Tenancy Policy Guideline 37, light fixtures have an average useful life of 15 years; therefore, I find it likely that the fixture was at the end of its useful life and of little value after factoring in depreciation. Therefore, I do not find the tenants responsible for replacing the light fixture.

I am uncertain as to the age of the closet doors; however, since the co-tenant began residing in the rental unit in September 2003 I find it likely that the doors are at least 7.5 years old and have had considerable use during that time. I found the tenant's

explanation that the bi-fold doors came off the tracks due to wear and tear; therefore, I do not find the tenants responsible for repairing the broken closet doors.

The majority of the remaining reasons for ending the tenancy pertain to the cleanliness of the rental unit. At the end of the tenancy a tenant is required to return the unit to the landlord in a clean and undamaged condition. If the tenant fails to do so at the end of the tenancy the landlord may seek compensation from the tenant. During a tenancy, while a tenant is occupying a rental unit, a tenant cannot be expected to keep the unit as clean as it should be upon returning possession to the landlord. Thus, I find that ending a tenancy for failure to maintain a reasonably clean unit would be reserved for the most serious situations that risk damage to the property or pose a health hazard.

Upon review of the photographs taken April 15, 2011 and upon hearing from the parties, I do not find sufficient evidence that the state of cleanliness is such that there is a risk of damage to the property or a health hazard.

As acknowledged by the tenant during the hearing, further cleaning of the unit is likely warranted and I urge the tenant to do so. However, for the reasons given above, I do not find sufficient evidence that the tenancy should end for failure to repair and clean the unit within a reasonable time.

Based on my findings above, I grant the tenant's request to cancel the Notice to End Tenancy and this tenancy shall continue.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues.

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: June 07, 2011.

Residential Tenancy Branch