

## **DECISION**

**Dispute Codes:** CNC, MNDC, OLC, RP, LAT, RR, FF

### **Introduction**

This hearing dealt with the Tenants' application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice); for compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; for an Order that the Landlord make repairs to the rental unit; for an Order authorizing the Tenants to change the locks to the rental unit; to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenants served the Landlord with the Notice of Hearing documents and documentary evidence, by registered mail sent April 27, 2011.

### **Preliminary matter**

The Tenants have made many claims in their Application for Dispute Resolution which are not sufficiently related to the main issue, which is to cancel the Notice. Rule 2.3 of the Rules of Procedure provides:

#### **2.3 Dismissing unrelated disputes in a single application**

If, in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer

may dismiss unrelated disputes contained in a single application with or without leave to reapply.

During the course of the Hearing and upon review of the Tenant's application, I determined that it is appropriate to deal with the Tenants' application to cancel the Notice and to recover the cost of the filing fee from the Landlord only. The remaining matters are dismissed **with leave to reapply**.

### **Issue to be Decided**

Should the Notice issued April 16, 2011, be cancelled?

### **Background and Evidence**

It was established that the Landlord served the Tenants with the Notice on April 16, 2011, by hand delivering it to the Tenants at the rental unit.

The rental unit is a house which is comprised of two suites. The Tenants rent both suites from the Landlord.

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

1. The Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk;
2. The Tenants have caused extraordinary damage to the rental unit;
3. The Tenants have not done required repairs of damage to the rental unit;  
and
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

### **The Landlord gave the following testimony:**

With respect to the first reason, the Landlord testified that there was a flood in the lower

suite of the rental unit and that he initially thought the Tenants were responsible for the flood. He stated that he has since talked to experts, who told him that the flood may have been caused by the Tenants hanging heavy objects on the water lines, but that it was also possible the flood was caused by a sudden increase in water pressure in the pipes.

The Landlord testified that the Tenants caused extraordinary damage to the rental unit by damaging the downstairs suite's kitchen counters. The Landlord testified that the Tenants put hot pots on the counter, leaving burn rings, and that they do not treat the counter with due care. As a result, the counter is showing burns and signs of water damage.

He stated that the Tenants also allow their cats to defecate and urinate on the downstairs carpet. The Landlord stated that major restoration may be required if cat urine has penetrated wooden floors or the concrete. The Landlord did not know if this has occurred.

The Landlord testified that he is attempting to sell the rental unit and the smell from the carpets, together with the untidiness of the rental unit and yard, have made unlikely that anyone will purchase the property. He stated that the Tenants have erected a shed on the rental property that is an eyesore and that there is debris strewn throughout the yard.

The Landlord testified that he gave the Tenants written notice that he expected certain repairs to be done. The required repairs included:

1. Repairing an exterior door and door jamb;
2. Repairing gouges on some closet doors;
3. Repairing the door jamb on the downstairs master bedroom and replacing the door knob;
4. Replacing a broken receptacle;

5. Removing marks on some doors;
6. Repairing the downstairs kitchen counter;
7. Removing debris from the yard and taking down the shed.

The Landlord testified that the Tenants have replaced the broken receptacle, and that some debris has been picked up from the yard, but that the remainder of the repairs have not been done.

The Tenants gave the following testimony:

The Tenants deny doing any of the things the Landlord has alleged on the Notice.

The Tenants testified that the counter in the downstairs kitchen is made of varnished plywood and that it has not been sealed properly. The Tenants testified that wiping the counter when it is wet removes small amounts of varnish and that as a result the countertop is water damaged and warped. The Tenants do not believe they should be made responsible for repairing a counter that was damaged because it is not made of appropriate material for use in a wet area. The Tenants do not dispute that they are responsible for one burn mark.

The Tenants testified that they told the Landlord about the water damage to the counters months ago and that the Landlord came to repair it and removed the kitchen sink to do so. Shortly afterwards, the downstairs suite flooded and the Landlord has not repaired the counter or reinstalled the kitchen sink. The Tenants testified that the carpets were not new when the Tenants moved in, and that old odours in the carpet were released when they became wet from the flood. The Tenants testified that the Landlord did not replace the carpets, but removed them, cleaned them and placed them back down again. There is still a faint chemical odour emanating from the carpets.

With respect to the Landlord's claim that they are responsible for the scratches on the outside door and door jamb, the Tenants testified that there was no inspection of the

exterior of the rental unit at the beginning of the tenancy and that they may have existed prior to the tenancy. Furthermore, the Tenants testified that the Landlord brings his dog with him on monthly inspections and that the Landlord's dog scratches at the door and the windows.

The Tenants stated that the "gouges" the Landlord refers to on the closets are very small and were there when they moved into the rental unit.

The Tenants agree that they damaged the downstairs master bedroom door when their 2 year old locked herself in. The Tenants stated that they were not provided a key and could not unlock the door. The Tenants removed the door knob so it would not happen again. The Tenants testified that they told the Landlord about it as soon as it happened and the Landlord agreed that they could repair the door jamb and replace the door knob at the end of the tenancy.

The Tenants testified that the marks on the doors were made from washable crayon and that they have been easily removed.

The Tenants testified that the Landlord agreed that the Tenants could erect a temporary plywood structure on the rental property because there was no garage or other outdoor storage area. The Tenants testified that the Landlord said it would be alright as long as they took it down when they moved out. The Tenants testified that some of the debris the Landlord referred to was actually left by the workmen who were restoring the carpet after the flood.

The Tenants testified that they have purchased a home and that they intend to move out of the rental unit on July 31, 2011.

### **Analysis**

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

I find that the Landlord has not provided sufficient evidence that the Tenants have done any of the things set out in the Notice.

1. There was insufficient evidence that the Tenants had put the Landlord's property at significant risk. The Landlord stated that he was not certain what caused the flood in the basement.
2. The photographs provided by the Landlord indicate that the kitchen counters are constructed of a light wooden material, which appears to be plywood. I find that plywood is not a suitable material for kitchen counters and that the water damage cannot be attributed to negligence on the part of the Tenants.
3. Tenants are not required to make repairs unless they are responsible for causing the damage. The Landlord did not provide sufficient evidence that the Tenants were responsible for causing the damages he requires them to repair, such as a move-in Condition Inspection Report that complies with the requirements of Section 20 of the regulations.
4. The Landlord did not provide sufficient evidence that the Tenants have breached a material term of the tenancy agreement.

Therefore, I grant the Tenants' application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants have been successful in their application and are entitled to recover the filing fee from the Landlord. The Tenants may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

## **Conclusion**

The Tenants' applications for compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; for an Order that the Landlord make repairs to the rental unit; for an Order authorizing the Tenants to change the locks to the rental unit; and to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided are dismissed **with leave to reapply**.

The Notice to End Tenancy issued April 16, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants may deduct \$50.00 from future rent due to the Landlord.

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: May 25, 2011.

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Residential Tenancy Branch