



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Preliminary Issues

The landlord advised that the other landlord named on the application (her husband) has recently passed away. Neither party raised any objections to the landlords' husband's name being removed from the decision and Order.

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause and to recover the filing fee for this application.

I am satisfied that serve of the hearing documents took place as declared by the tenant.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both Parties agree that this tenancy started on March 01, 2010. This was a fixed term tenancy and reverted to a month to month tenancy at the end of the fixed term. Rent for this property is \$1,100.00 and is due in advance on the first day of each month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on August 16, 2011. This notice has an effective date of September 30, 2011 and gave one reason to end the tenancy: *The tenant has caused extraordinary damage to the unit, site or property.* The landlord testifies that the tenant has cut down a maple tree, a crap apple tree and a rhododendron bush without permission of the landlord. The landlord testifies she asked the tenant why she had cut down the two trees and the bush and says the tenants told her she had permission to cut down the maple tree from the landlords' late husband as the branches were too close to the roof deck. The landlord testifies that both of these trees were healthy and did not pose any harm to the structure of the building. The landlord has provided photos of the tree stumps left in the garden and photos of the healthy branches removed from the maple tree.

The landlord testifies the tenant has also caused significant damage to the yard by erecting a dog run in the middle of the lawn and has not attended to the garden letting weeds grow over six feet tall.

The landlord testifies that on inspection of the interior of the house it was found that the tenant had let her dogs urinate on the master bedroom carpet and this now had a significant odour of dog urine. The landlord states she has yet to determine if the subfloor is also damaged.

The landlord testifies the tenant has appeared to allow many more occupants to stay at the rental unit. Originally the unit was rented for three people but since then it has been observed that there are additional vehicles at the house for many months and different people answering the door who have the appearance of occupants. Due to this and the tenants neglect in not following the maintenance instructions for the septic tank, the tank malfunctioned and started to bubble up into the yard. The landlord testifies when the contractor pumped out the septic tank he found objects such as plastic bags which may have caused the tank to fail prematurely. The landlord testifies that the septic tank had been pumped by them during their 22 years occupancy of the property. The landlord also states

the contractors truck caused substantial damage to the lawn which has not yet been repaired by the tenant.

The landlord testifies that her and her husband had a verbal contract with the tenant that she would pay for any repairs but once she received the invoice from the contractor for the septic repair she refused to pay it.

The landlord testifies that during an inspection of the house on August 07, 2011 she found substantial damage to the bathroom. The carpet and linoleum had been pulled up and there were several large holes in the dry wall. The landlord states this damage may have been caused due to renovations in the bathroom but neither she nor her husband gave the tenant permission for the bathroom to be renovated. The landlord testifies she asked the tenant to stop all work on the bathroom.

The landlord testifies that she has now also served the tenant with a Two Month Notice to End Tenancy for the landlords' use of the property as she wishes to move back into the home as her husband recently passed away.

The tenant disputes the landlords' claims. The tenant testifies that she had an arrangement with the landlords at the start of the tenancy that she would take care of cutting the lawns but the landlord would have to do annual pruning and care of the trees and shrubs. The tenant testifies the landlords did not do this and the male landlord spoke to her on the phone in July, 2011 and asked her to prune the maple tree as the branches were going to ruin the deck. The tenant states she had also discussed with the male landlord about cutting down the crap apple tree and he was happy for her to do this as it was dead and he wanted a circular driveway. The tenant testifies the maple tree looked like it had some kind of a disease as the limbs were turning black. The tenant states the rhododendron brush required a heavy pruning as it had not been attended to in some time but is still a healthy plant and doing well. The tenant testifies the landlords knew she did not know how to prune trees but the male landlord still asked her to do this work.

The tenant testifies she did install a dog run in the garden last fall due to bears coming onto the property. She states at the time the landlords had no issue with her installing this and she intends to take it with her when her tenancy ends.

The tenant testifies the dog urine was already on the carpets when she moved into the house she recalls a conversation with the landlords where they admitted their dog was not house trained. The tenant testifies they had the carpets cleaned and were told she would have to use ammonia to get rid of the urine smell; however as her daughter was pregnant at that time she did not want to use strong chemicals.

The tenant calls her witness SI. This witness testifies that she is the general manager and project manager for the septic tank company who carried out the repairs and sits on the board that regulate septic systems. The witness testifies that she has read the landlord response to the tenants' application and states when they went to the home the toilet was backed up and the pipes were gurgling with a smell of effluence. They excavated the system and found that it did not conform to current regulations and had been installed in an amateurish manner. She states the tank is a health hazard. The water pipes to the septic field were not attached correctly with a mixture of pipes and the cast iron pipes had been wrapped in plastic bags. No plastic bags were found in the tank. The witness testifies that it appeared as if a large rock had been left as a marker for the feeder pipe and this had knocked the pipe. The witness disputes the landlords' testimony that the tank had been emptied in recent years due to the thick level of crust, old planks and foreign objects in the tank. The witness states in her professional opinion the tenant is not at fault for damage to the septic tank. She states it is possible the tank had come to the end of its life span. She testifies she recommended to the tenant that the bathroom floor should be removed due to the toilet overflowing with septic waste. The tenant paid this bill to the company for \$1,488.17. The witness also adds that when the truck had to come onto the lawn it did make tracks in the lawn which were put back to the best of their ability.

The landlords' agent DP cross examines the witness and asks if she was at the house when he did an inspection and is the witness a friend of the tenants. The witness replies that she was at the house as she has since become a friend of the tenants and house-sat for the tenant for 10 days.

The landlords' agent SH questions the witness and asks her to clarify that no maintenance had been done on the tank for years. The witness states she made this statement as a professional after seeing the 36 inches of crust on the top of the tank and the fact that the tank is falling apart with age.

The tenant testifies that there were holes in the walls when she moved into the unit. The tenant calls her second witness MH who is a building and heating contractor she employed to look at the bathroom. The witness testifies that he went to the house as the tenant complained that she had no water going to the shower. He states when he got there it was evident that it had been leaking and he changed the tub spout to divert water to the shower. He states he told the tenant to get it fixed. He states it was apparent that it had leaked for some time as there was evidence of dry rot. He states he looked at the pipe work and these had been repaired and patched. He states the flooring behind the tub was rotten.

The landlords agent cross examines this witness and asks when the work was carried out. The witness replies in March, 2010. He states he was not called back to make any other repairs.

The tenant calls her third witness LS. This witness is a friend of the tenants. This witness testifies that she went to the house the day after the tenant moved in and states there was a strong smell of urine present however the tenants dogs were not there at that time. She states she went back again in October, 2010 and found the unit had been significantly cleaned up by the tenant and there was no smell of urine. The witness testifies she returned to visit the tenant in March 2011 and found she had made big improvements to the house

but agrees she did not see the yard. The witness also testifies that only the tenant and her family have lived in the house and anyone else is to her knowledge just visitors.

The tenant testifies she is moving from the rental unit on September 30, 2011.

The landlord requests that the One Month Notice is upheld and seeks an Order of Possession.

Analysis

Sections 23 of the *Act* say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this matter the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. Having reviewed the documentary evidence I find the landlord has insufficient evidence to support the testimony that the tenant has damaged the bathroom walls, the septic system or is responsible for the track marks left in the lawn from the septic tank truck. I also find the tenant still has opportunity to make good any damage caused to

the garden from the dog run as her tenancy is still in place and the dog run can be removed. The landlord has provided insufficient evidence to show that the tenants dogs have urinated on the carpets and that this was not as a result of her own dogs.

With regard to the damage to the bathroom floor; the landlord has not shown that the tenant caused a problem with the septic tank and as this caused the toilet to overflow then the landlord would be responsible for any repairs to the interior of the bathroom caused by this. I accept the tenant took this flooring up without permission from the landlord however the landlord did ask the tenant to cease and deist any further work thus preventing her from making any repairs herself to the flooring.

With regard to the damage caused to the maple tree, crap apple tree and rhododendron bush. I have considered the documentary evidence and verbal testimonies presented and find there is insufficient evidence to show the rhododendron bush has been irreparable damaged. The tenant argues that the landlords should have cut these trees back themselves but instead asked her to do this. The landlord argues her husband did not ask the tenant to do this and the tenant has not just pruned the trees but cut them down to bare trunks therefore destroying perfectly healthy trees. It is my decision, from the evidence presented, that the tenant did act in a manner that caused damage to the maple tree and crap apple tree. If the landlord had asked the tenant to cut back the trees or prune them and the tenant was unsure how to proceed with this she should have refused to do the work or sought advice on how to do it correctly. There is no evidence that the trees were dead or diseased and consequently I find the tenant is responsible for the damage to these trees.

Conclusion

The tenant's application is dismissed in its entirety. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: September 26, 2011.

Residential Tenancy Branch