



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC OLC RP LAT RR FF OPC MND CNC

Introduction

This hearing originally convened on September 16, 2011 to deal with applications by the landlord and the tenants. The tenants applied for monetary compensation, an order the landlord comply with the Act, a order for repairs, an order setting limits on the landlord's right to enter the rental unit and a reduction in rent. The landlord applied for an order of possession and a monetary order. On that date, the tenants stated that they had also filed a second application, to cancel the notice to end tenancy. I determined it was appropriate to adjourn the hearing and join the three files to be heard together.

The two landlords and the two tenants participated in the teleconference hearing on both dates.

The hearing reconvened on October 18, 2011. The landlord and the tenants both submitted late evidence. The Rules of Procedure require that applicants file and serve copies of all available evidence at the same time they make their application for dispute resolution, and that they serve all evidence at least five business days before the date of the hearing. All evidence that a party intends to rely on in the hearing must be provided to the other party in a timely fashion so that the other party may have time to consider the evidence against them and provide their evidence in response, and so that the hearing may be conducted in accordance with the principles of administrative fairness. I determined that as the hearing had already been adjourned once and both sides had been given adequate time to submit and serve their evidence, it was not appropriate to adjourn the hearing a second time. I therefore did not admit or consider the late evidence of the tenants or the landlord.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remaining issues in the conclusion of this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on December 1, 2003. A clause in the tenancy agreement states as follows: "The tenant agrees to inform the landlord of any repairs required."

On August 24, 2011, the landlord and the tenants participated in a dispute resolution hearing pursuant to the landlord's application for an additional rent increase. The landlord was successful in their application.

On August 30, 2011, the tenants received a one month notice to end tenancy for cause. The notice indicated that the two reasons for ending the tenancy were that (1) the tenants have caused extraordinary damage to the rental unit; and (2) the tenants have put the landlord's property at significant risk.

The evidence of the landlord was as follows.

On November 7, 2010, the landlord inspected the rental unit and discovered water damage to the hardwood flooring. The tenants stated that they had only discovered the water damage about a week before the inspection. On December 19, 2010, the landlord visited the unit again, and the tenants told the landlord that the dishwasher stopped working properly in the summer of 2010, and the kitchen faucet had been leaking in the spring of 2010 but the tenants had repaired it themselves.

The landlord had the hardwood floor replaced. On June 27, 2011 the landlord emailed the contractor to request written confirmation of the source of the damage to the flooring. The contractor replied, "As far as we can tell the water loss is from the dishwasher. Water loss is severe enough to cause replacement of flooring." The landlord also submitted as evidence a letter from their insurer dated August 30, 2011. In the letter, the insurer notes, "the contractor had indicated that if the tenant had reported the water escape on a timelier basis that would have mitigated the damage."

The landlord submitted that the tenants' failure to report the problems with the dishwasher and the faucet led to the damaged flooring, and the damage was so extraordinary as to justify ending the tenancy.

In addition to failing to report the problems with the dishwasher and the faucet, the tenants continue to put the rental unit at significant risk through a pattern of unreported or inaccurately reported repairs and maintenance issues.

In November 2010 the landlord asked the tenants to provide a list of all items requiring maintenance, but the tenants did not do so until six weeks later. The tenants complained that the stove display panel was blinking on and off, so the landlord forwarded the tenants the instruction manual. Six weeks later the landlord checked with the tenants and they stated the stove still was not working. The tenants also reported water leakage from the fridge. A repair person attended at the unit and was able to fix the problem with the stove but could not find any problems with the fridge. At the time, the tenants told the repair person about problems with the dryer, but the tenants had not reported that problem to the landlord first. The tenants reported a problem with the heating in the unit, but the landlord did not find any such problem. Maintenance persons have indicated that the tenants have been hostile or difficult to deal with.

The landlord has had difficulty getting the tenants to respond to the landlord in a timely fashion to confirm or clarify maintenance issues, and the tenants continue to report maintenance issues to others before reporting to the landlord. The landlord is concerned about future risk to the rental property, and believes that such potential risk justifies ending the tenancy.

The tenants' response was as follows.

The tenants have reported maintenance issues and have taken care of the rental unit. When the tenants became aware of an invisible leak in the kitchen faucet, they attempted to contact the landlord at the contact number they were given at the outset of the tenancy, but the call did not go through. Even the concierge for the building did not know how to contact the landlord to forward the landlord's mail. The landlord was not carrying out regular maintenance on the rental unit, and after the tenants reported problems with the fridge and stove, the landlord did not check to ensure the problems were resolved.

In the hearing, the tenants stated that they were pursuing a judicial review of the decision granting the landlord an additional rent increase.

Analysis

I find that the landlord has failed to provide sufficient evidence on either alleged cause to end the tenancy.

The landlord's evidence does not clearly establish that the tenants caused the flooring to be damaged. The tenants noticed some problems with the operation of the dishwasher. The contractor could not confirm with certainty that the water loss that

damaged the flooring was caused by the dishwasher, and the contractor made no reference to the leaky faucet. Moreover, the landlord failed to demonstrate that the damaged flooring, which could be and was repaired, amounted to extraordinary damage to the rental unit.

Section 32 of the Act sets out the obligations of the landlord and the tenant to repair and maintain the rental unit. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit, and the tenant must repair any damage to the unit that is caused by the actions or neglect of the tenant. There is no requirement under the Act for the tenant to report maintenance issues.

The tenants may have breached the term of the tenancy agreement in which they agreed to inform the landlord of any repairs required; however, the landlord did not seek to end the tenancy on the basis that the tenants breached a material term of the tenancy agreement.

The notice to end tenancy is not valid.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The portion of the landlord's application regarding an order of possession is dismissed.

As the tenants were successful in their application to cancel the notice, they are entitled to recovery of the filing fee for that application. The tenants may deduct \$50 from their next month's rent.

In regard to the tenants' first application and the remainder of the landlord's application, I find that a significant portion of those matters are directly related to the additional rent increase issue which the tenants are pursuing in Supreme Court. Accordingly, I dismiss those matters with leave to reapply.

This decision is final and binding, and 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 24, 2011.

Residential Tenancy Branch