



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began November 14, 2007 with monthly rent of \$321.43 and the tenant paid a security deposit of \$300.00.

On December 1, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

- The tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that the tenant has caused extraordinary to the rental unit. The landlord stated that corners of walls are damaged, there are scratches on the back of the door, the bi-fold closet doors were destroyed, there are dents on the fridge door and the carpet is stretched and rippled. The landlord stated that he obtained quotes to have all the necessary repairs made in the tenant's rental unit and these came to a total cost of \$5400.00. This cost is to replace the fridge, replace the carpet, replace 2 pocket doors, replace the front door, repair the bathroom ceiling and paint the rental unit.

The landlord maintained that due to the high cost of repairs that this is extraordinary damage and the tenancy should not continue. The landlord stated that they are not set up to handle handicapped residents and that the tenant had been forced on the landlord by BC Coastal Health in 2007. The landlord did acknowledge that there are 3 or 4 other residents in the building that use power wheelchairs but that their rental units are not damaged like the tenants.

The tenant's advocate spoke to the fact that the tenant has occupied the rental unit since November 2007 and October 2011 was the first time the landlord ever conducted an inspection of the rental unit. The tenant's advocate went on to say that much of the damage occurred in early 2008 when the tenant first began using a power wheelchair and that the damage has not worsened since that time. The tenant's advocate stated that this is not extraordinary damage and simply damage that would occur with the use of a wheelchair.

The tenant's advocate stated that an Occupational Therapist was sent to the tenant's rental unit and it was verified that the damage was *reasonable wear and tear by a person who has to begin using an electric wheelchair because of progressing disability*. The tenant's advocate stated that the tenant has good control of the power wheelchair and there is no additional damage occurring to the rental unit.

The tenant testified that he was aware of other residents with power wheelchairs however it was his understanding that they had enough mobility to be able to walk in their rental unit and not have to use the power wheelchair. The landlord countered the tenant's testimony by stating that the tenant had no knowledge of the requirements of other tenants in the building.

The tenant's advocate stated that the tenant's case worker continues to work with the tenant to find more appropriate housing.

The landlord questioned as to whether or not the tenant would pay for the cost of repairs when the tenancy did end however that is not part of this application and was not discussed any further.

Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord has failed in his burden of proving he has cause to end this tenancy. The onus or burden of proof is on the party making the claim and in this case the landlord has claimed there is cause to end this tenancy and the tenant does not agree.

The landlord has provided documentation regarding this tenancy however I find insufficient evidence to prove that the tenant has caused extraordinary damage to the rental unit. It is acknowledged that there has been damage to the rental unit from the tenant's use of the power wheelchair however the damage, with the exception of the ceiling damage, is normal wear and tear from someone using a power wheelchair.

It must also be noted that the tenant required the use of a wheelchair prior to the start of this tenancy and the landlord has been aware of the tenant's condition since the start of the tenancy in 2007.

To avoid the potential of damage to new bi-fold doors it was agreed in this hearing that the landlord will not replace the bi-fold doors until after this tenancy comes to an end.

I therefore allow the tenant's application and set aside the landlord's 1 Month Notice to End Tenancy for Cause dated December 1, 2011 with the result that the tenancy continues uninterrupted.

Conclusion

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

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: January 31, 2012

Residential Tenancy Branch