



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel the One Month Notice to End Tenancy for cause; for a Monetary Order for Money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; an Order for the landlord to comply with the Act, Regulations or tenancy agreement; and to recover the filing fee from landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a 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.” In this regard I find the tenant has applied for a Monetary Order for money owed or compensation for damage or loss and for an Order for the landlord to comply with the Act. As these items are unrelated to the tenant’s application to cancel the Notice to End Tenancy I dismiss these items with leave to reapply.

Issue(s) to be Decided

- Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this month to month tenancy started on October 01, 2010. Rent for this unit is now \$1,330.00 per month and is due on the first day of each month. No move in condition inspection was completed at the start of the tenancy.

The landlord testifies that on October 23, 2011 he viewed the rental unit after giving the tenants written notice. In this inspection he found substantial staining to the second bedroom carpet and some staining on the master bedroom carpet; there were chips in the kitchen cabinetry; there was a five inch scratch in the cork flooring, the driveway had oil stains and some damage caused by the tenants kickstand on his motor bike; there was a broken sandbag in the rock landscaping and the entrance closest door was damaged. The landlord testifies that the unit was in good condition prior to this tenancy commencing.

The landlord testifies that he wrote to the tenants concerning these damages providing them with a list of the damages and told them they had a week to repair the damages and the landlord would return in a week to assess the damages again. The landlord testifies he returned a week later and found none of the damages had been repaired. The landlord testifies that he then served the tenants with a One Month Notice to End Tenancy for cause.

The One Month Notice was served on October 31, 2011 by posting it to the tenants' door and has an effective date of December 01, 2011. The Notice gives two reasons to end the tenancy as follows:

- 1) The tenant has caused extraordinary damage to the unit/site or property
- 2) The tenant has not done required repairs to the unit, site of property.

The tenant disputes the landlord testimony. The tenant states they feel the landlord is discriminating towards them as this is a shared driveway and both sides have some oil stains on it. The tenant states he did clean the oil stains off his side as best as he could but the drive way needs to be resealed to prevent further staining. The tenant also testifies that he could not rent a steam cleaner within the week the landlord gave them to carry out these repairs as they were all booked out. He states he did steam clean the carpet on November 01, 2011 to deal with the staining on the carpet caused by an accident his dog had.

The tenant testifies they cannot find any of the alleged chips in the kitchen cabinetry and he could not find the alleged scratch in the cork flooring. The tenant testifies he did clean up the sand bag spill and also cleaned up some oil spillage which someone else had dumped by the fence. The tenant agrees the small holes in the asphalt were caused by the tenant's kickstand of his bike and are about one inch by one inch. The tenant states this was caused in the hot summer when the asphalt becomes soft due to the heat. The tenant states this is minor damage and will be corrected when they move from the rental unit. The tenant states if there are any chips or scratches or other damage it would be minor wear and tear caused during their tenancy of one year. The tenants have provided photographic evidence of all areas of the house and driveway the landlord alleges they have damaged.

The tenant testifies that he believes the landlord is retaliating against them because the City found out about the illegal suite in the basement and decommissioned it. The tenant states the landlord now wants them to move out so he can rent the house as a

whole unit. The tenants seek to cancel the Notice to End Tenancy and recover their filing fee from the landlord.

The landlord requests that the Notice to End Tenancy is upheld and seeks an Order of Possession for December 31, 2011.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.

I am not satisfied from the evidence presented that the tenants have caused extraordinary damage to the unit/site or property. While I accept the photos do show some staining to the carpets there is no other corroborating evidence to show that the tenants have caused any extraordinary damage and I would not determine some stains to the carpets to be classed as extraordinary damage. The tenant has testified that he did clean the carpets and corrected other minor deficiencies mentioned on the landlords list of damages that they could find. I agree with the tenant that if there are minor chips or scratches on the cabinetry and in the cork flooring that this could be deemed to be reasonable wear and tear as they do not show in the photographic evidence provided.

The landlord failed to do a move in condition inspection report to show the condition of the unit at the start of the tenancy. If this report had been completed it would show what, if any, damages are caused through the actions or neglect of the tenants during their tenancy. Therefore In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application to cancel the One Month Notice is allowed. The one Month Notice to End Tenancy for Cause dated October 31, 2011 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

The remainder of the tenants' application is dismissed with leave to reapply.

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: November 25, 2011.

Residential Tenancy Branch