

DECISION

Dispute Codes OPC, MNSD, FF, MT, CNC, OPT, RP

Introduction

There are applications filed by both parties. The Landlord has applied for an order of possession and a monetary order to keep all of the security deposit and recovery of the filing fee. The Tenant has applied for more time to make an application to cancel a notice to end tenancy, to cancel the notice to end tenancy for cause, obtain an order of possession, to make repairs to the unit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have made detailed reference to the evidence submitted by the other, I am satisfied that each has been properly served with the notice of hearing and evidence packages under the Act.

At the beginning of the hearing it was clarified by the Tenant that their application for more time (MT), an order for possession (OPT) and repairs (RP) are being withdrawn as she did not require more time, currently lives in the rental and is seeking no repairs.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to keep all or part of the security deposit?

Is the Tenant entitled to cancel the notice to end tenancy for cause?

Background and Evidence

Both parties agreed that the Tenant was served with the 1 month notice to end tenancy for cause on January 29, 2011. The notice displays an effective date for February 29, 2012. Both parties agree that no condition inspection report was completed.

The Landlord claims that the Tenant caused damage to the laminate floors. The Landlord states that the floors in the bedroom and living room show raised edges. The Landlord relies on the photographs submitted as evidence. The Tenant disputes that the damage was caused by her. The Tenant states that the raised edges are restricted

to the bedroom and that she is not aware of any damage in the living room. Both parties agree that the building renovation construction started in June of 2011. The Tenant states that she was living with a friend during this time. During the construction the Tenant states that she frequently returned to the rental and found the windows left open. The Tenant states that when she moved back in that she did not immediately notice any damage to the floors. The Landlord claims that a deficiency list was provided to the Tenant by the contractors and was not completed. The Tenant claims that the deficiency list was completed and given to the construction company with no issues noted on the list.

The Tenant seeks to cancel the notice to end tenancy for cause.

Analysis

As explained to the parties at during the hearing the onus or burden of proof is on the party making the claim, in this case both parties are responsible as they have each made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. As the only objective evidence submitted by the Landlord is the photographs of the flooring, I find that the Landlord has failed to establish a claim. The photographs do not show any obvious damage nor has the Landlord provided any evidence of negligence on the part of the Tenant. The Landlord's application for an order of possession is dismissed. The Tenancy shall continue. The Tenant's application to cancel the notice to end tenancy is granted. As the Tenancy is continuing the Landlord's application to retain the security deposit is dismissed. As the Tenant has been successful in her application, I order that the Tenant may withhold \$50.00 one-time from the monthly rent due to recover the \$50.00 filing fee.

Conclusion

The Landlord's application is dismissed without leave to reapply.

The Tenant's application to cancel the notice to end tenancy is granted. The Tenancy shall continue. The Tenant may withhold \$50.00 one-time from the monthly rent due.

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: February 20, 2012.

Residential Tenancy Branch