



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the beginning of the hearing I noted that I was not provided any documentary or photographic evidence from either party with the exception of the Notice to End Tenancy. The tenant stated that she had recently provided evidence to the Residential Tenancy Branch only. As the landlord was not served with the tenant's evidence I advised the parties that I would not consider the tenant's evidence if I did receive it at a later time and that I would proceed with the hearing based upon verbal testimony only.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The month-to-month verbal tenancy agreement commenced approximately 7 years ago and the tenant is required to pay rent of \$600.00 per month. For several years the tenant has paid rent in partial payments of \$300.00. On January 30, 2012 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice). It was served upon the tenant personally either January 30, 2012 or January 31, 2012. The tenant disputed the Notice within the time limit provided by the Act.

The Notice has an effective date of February 29, 2012 and indicates three reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit;
- Tenant has caused extraordinary damage to the unit; and,
- Tenant has not done required repairs of damage to the unit.

Occupants

The landlord submitted that a couple of years ago the tenant appeared to have approximately eight people living in the rental unit; however, currently there are fewer than that living in the unit. The landlord did not know the number of people currently residing in the unit. The tenant responded that there are five people currently living in the four bedroom house. The tenant suggested the landlord mistook visitors for people living in the rental unit. The landlord appeared to accept the tenant's submission that only five people are living in the rental unit.

Damage to property

The landlord submitted the tenant, or persons permitted on the property by the tenant, have caused the following damage to the property:

1. Two to three years ago the bedroom window and the porch window were broken and the windows remain unrepaired by the tenant despite his numerous verbal requests for her to make repairs.
2. There is a large hole in the drywall under the bedroom window.
3. There are other numerous holes in the drywall in the halls and stairwell that the landlord observed in late January 2012.
4. Water has sprayed from the bathroom showerhead and the shower curtain is not used properly, causing water damage.
5. Household garbage has accumulated on the property despite regular garbage collection services that are available at the property.

The landlord acknowledged that he has not given the tenant written notice to make specific repairs. Rather, he had made several verbal requests for her to repair the broken windows. Then, upon inspecting the property in late January 2012 with an appraiser, the landlord observed other damage such as the holes in the walls. The landlord proceeded to issue the Notice to End Tenancy.

The tenant submitted that the landlord has never provided the tenant with a written request for her to make specific repairs. Nor does the landlord inspect the unit. After receiving the Notice the tenant purchased drywall and painting supplies, a showerhead and toilet seat. The tenant has had the holes in the walls repaired but not yet painted. The tenant also obtained a quote for replacement glass for the bedroom window. The tenant submitted that she is limited by her financial situation in getting the windows repaired and that taking the bedroom window out for repair at this time of year will expose the house to the winter elements. The tenant explained that the bedroom window is double paned and that one pane is still intact. The tenant had put plastic on

the window in an effort to retain heat. The porch window is not a window that opens to the inside of the house.

The tenant also wanted to submit testimony with respect to moisture and mould growth in the unit and a request that it be repaired. As the tenant had not made an application for repair orders, I informed the parties that such a request was not an issue for me to determine under this application. Rather, the tenant was encouraged to first request the landlord inspect the property and make necessary repairs and then if repairs are still required she may make an application seeking repair orders.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove that the tenancy should end for the reason(s) indicated on the Notice.

With respect to an unreasonable number of occupants I accept the tenant's submission that five people currently reside in the rental unit as the landlord did not have evidence to the contrary. I find that five people living in a four bedroom house is reasonable and not a basis to end the tenancy.

In the absence of a written request for the tenant to make repairs, a Notice to End Tenancy issued shortly after the damage occurred, documentary or photographic evidence, I find the landlord has not met his burden to demonstrate that the tenant has significantly damaged the property especially when I consider the landlord has been aware of much of the damage for a long time. Therefore, I do not find sufficient evidence of significant damage to the rental unit or property.

Based upon the undisputed evidence that there are broken windows and holes in the walls I am satisfied the tenant is responsible for causing some damage to the property for which she is responsible for repairing, such as: the broken windows and holes in the walls. However, by the landlord having long term knowledge of damage and not providing the tenant with a detailed and written request for her to make repairs by a certain date I find the tenant was without notice that the landlord would attempt to end the tenancy for damage. Where a long time has elapsed since damage occurred I find it reasonable to expect that the landlord would step up enforcement by giving the tenant a written demand for her to make specific repairs by a certain date before serving her with a Notice to End Tenancy.

Although I find the tenant responsible for some damage to the property, such as broken windows and holes in the drywall, for the reasons stated above, I cancel the Notice to End Tenancy with the effect that this tenancy continues at this time.

The landlord is at liberty and is encouraged to prepare a written demand for the tenant to make specific repairs within a reasonable time frame. Then, after the deadline has passed the landlord should inspect the property again to determine whether those repairs have been made before deciding how to proceed. If the necessary repairs are not made within a reasonable time after the written demand is given to the tenant the landlord is at liberty to serve another Notice to End Tenancy for damage.

I award the tenant one-half of the filing fee she paid for this application as I find the action, or inaction, of both parties has contributed to this application. Since the tenant paid \$50.00 for this application, the tenant is authorized to deduct \$25.00 from her next month's rent in satisfaction of this award.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues. The tenant is authorized to deduct \$25.00 from her subsequent month's rent in order to recover one-half of the filing fee.

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 29, 2012.

Residential Tenancy Branch