



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. The tenant, counsel and an advocate for the tenant, a witness for the tenant and two agents for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on July 28, 1979. The rental unit is a suite in a multi-unit building. On March 30, 2012 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were as follows:

1. The tenant has:
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - c. put the landlord's property at significant risk
2. The tenant has engaged in illegal activity that has, or is likely to:
 - a. Damage the landlord's property;
 - b. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
3. Tenant has caused extraordinary damage to the unit/site or property;

4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Landlord's Evidence

The tenant has been keeping excessive amounts of possessions in her rental unit, which has resulted in damage to the rental unit and has brought an infestation of bedbugs into the building. The tenant needs more help than the landlord can provide.

Under the tenancy agreement, the tenant is responsible for any negligent damage to the rental unit. The place is quite a shambles, and repairs are needed to make the suite liveable. The landlord acknowledged that the rental unit is now cleaned up, but the tenant has been through these cycles, and they are concerned that the tenant will bring her possessions back out of storage and into the rental unit again. The landlord was inspecting the tenant's unit every month, and right up to March 2012 it was a total disaster. The landlord submitted undated photographs of the rental unit to show the level of clutter and damage to the rental unit.

The health and safety of other tenants in the building has to be the landlord's primary concern. Other tenants have expressed a loss of faith in the landlord because of the presence of bedbugs, and some of those other tenants are now vacating the building. The landlord submitted a report dated April 2012 from a bedbug extermination company, in which the author of the letter provided their opinion that the rental unit "may very well be the original source" of the bedbug infestation.

Tenant's Response

There is admittedly disrepair to the unit, as there has not been much maintenance by the landlord. In 2010 the landlord unsuccessfully attempted to evict the tenant with a two-month notice to end tenancy for landlord's use. The tenant denies that she has caused extraordinary damage to the rental unit. It is not the tenant's responsibility to do repairs and maintain the unit.

The tenant acknowledged that historically there has been clutter. However, at the time the landlord served the notice to end tenancy, on March 30, 2012, it was not cluttered. The tenant cleaned up the rental unit over the period of a year. Most of the items have been permanently removed. The clutter will not occur again.

A witness for the tenant, LU, viewed the rental unit on April 12, 2012 and was impressed with what the tenant had done. LU is an inspector with the city and works

specifically with hoarding issues, and in her opinion there was not a hoarding issue in the tenant's unit on April 12, 2012.

The tenant provided photographs of the rental unit after she had cleaned up; the photographs depict a reasonably uncluttered unit that is clearly old and has not been repaired or maintained for a long period of time.

It is very difficult to prove where bedbugs originate, and in this case the landlord did not provide any evidence to substantiate their claim that the bedbugs originated in the tenant's rental unit. Another tenant in a neighbouring unit told the tenant that there were bedbugs in her last place.

Analysis

Upon consideration of the documentary, photographic and testimonial evidence, I find that the notice to end tenancy is not valid.

The landlord did not provide evidence to establish that the tenant was engaged in any illegal activities or provide a copy of any statute or bylaw that the tenant may have breached. I therefore could not make any determination regarding an allegation of illegal activity by the tenant.

The landlord did not provide sufficient evidence to establish that at the time that the notice to end tenancy was served that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or put the landlord's property at significant risk. The landlord's photographs of the rental unit were not dated. The landlord acknowledged in the hearing that the tenant had cleaned up the rental unit. The landlord did not provide sufficient evidence to establish that the tenant's rental unit was clearly the source of the bedbug infestation.

The landlord did not provide sufficient evidence to establish that the tenant caused extraordinary damage to the rental unit or that she breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so. Under the *Residential Tenancy Act*, a landlord must maintain and repair the rental unit. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant. A tenant is not required to make repairs for reasonable wear and tear. In this case, I find that the landlord has not

provided sufficient evidence to establish that any of the damage to the rental unit was clearly caused by the negligence or neglect of the tenant, rather than simply wear and tear over more than 30 years of the tenancy, without any efforts of the landlord to carry out necessary maintenance or repairs.

The notice to end tenancy is cancelled.

The tenant is entitled to recovery of the \$50 filing fee for the cost of her application.

Conclusion

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

The tenant may deduct \$50 from her next month's rent.

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: April 30, 2012.

Residential Tenancy Branch