



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 the Tenant's application cancel a *One Month Notice to End Tenancy for Cause* (the Notice) issued March 30, 2012.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions and documentary evidence.

It was established that the Landlord received the Notice of Hearing documents and that the parties exchanged copies of their documentary evidence.

Issue to be Decided

Should the Notice issued March 30, 2012, be cancelled?

Background and Evidence

The parties were in agreement to the following facts:

- The Tenant received the Notice on April 3, 2012.
- Monthly rent is due on the first day of each month.
- There was significant damage to the laminate floor in the rental unit's kitchen and to ceiling tiles in the unit below due to a water leak at the rental unit on February 9, 2012.

The Landlord's agent gave the following testimony:

The Landlord's agent stated that he accepted that the water damage was not directly caused by the Tenant and that the cause of the damage has not yet been determined. He stated that he seeks to end the tenancy because the Tenant did not notify him of the flood until he called her on February 11, 2012. He stated that the Strata Corporation advised him of the damage after the Tenant called them. The Landlord submitted that the Tenant had a duty to let him know about the damage as

soon as she became aware of it so he could limit the damage to the floors. He submitted that the damage caused was preventable, but the Tenant did not advise him in time. The Landlord's agent referred to Section 33(3)(b) of the Act and stated that the Tenant did not make at least 2 attempts to call him after the flood. He testified that the Tenant had been provided with his contact information in writing at the beginning of the tenancy.

The Landlord's agent testified that the water also caused damage to ceiling tiles in the unit directly below the rental unit.

The Landlord's agent stated that the Tenant had requested that her bathtub be re-caulked because of mould, but that it had been freshly done before she moved in about a year ago. He submitted that the mould was a result of inadequate cleaning habits and that therefore the re-caulking was her responsibility.

The Landlord's agent stated that the Tenant had also caused damage to the kitchen faucet, which had to be replaced. He submitted that she should pay for the cost of replacing the faucet.

The Landlord testified that on March 19, 2012 he gave the Tenant written demand to do repairs to the floor and to re-caulk the bathtub by March 30, 2012. He also demanded that the Tenant reimburse the Landlord for costs incurred to repair the kitchen faucet and replace some ceiling tiles in the unit below the Tenant. A copy of the March 19th demand letter was provided in evidence. The Landlord's agent testified that the Tenant refused to do the repairs or to pay for the cost of replacing the faucet and the ceiling tiles.

The Tenant's agent gave the following testimony:

The Tenant's agent testified that she was with the Tenant on February 9 when she arrived at the rental unit to discover water on the kitchen floor. She stated that the sinks were full and that there was some water on the floor, but not enough to consider the situation to be an emergency. The Tenant's agent testified that there had been a similar occurrence in October, 2011, at the rental unit and at a neighbour's suite, so the Tenant believed that the leak was caused by plumbing issues outside the rental unit. The Tenant's agent testified that the Tenant mopped up the water and decided to advise the Landlord in the morning because the water leak appeared to have stopped. The Tenant's agent testified that the Tenant sent an e-mail the following morning and only recently realized that she had somehow e-mailed herself and not the Landlord.

The Tenant's agent testified that the sinks had completely drained by the next morning but there was a gurgling noise coming from the sink. An hour later, they were filled up again with water and food remnants that the Tenant did not consume. The Tenant's agent testified that there had been previous concerns about the upstairs neighbour's garburator not working properly, so the Tenant believed her sinks were blocked for the same reason and immediately upstairs to tell her neighbour, who notified the strata corporation.

The Tenant provided a written statement, in which she submits that the laminate floor was probably ruined right away after the water contacted the floor. She submits that even if she had been home to mop up the water right away, and even if the Landlord had fixed the cause of the leak right away, the floors would have to be replaced because of the nature of laminate floors. The Tenant provided a letter from a home renovation professional and an excerpt from an internet search on laminate flooring from another home renovator's web site.

The Tenant's agent submitted that the caulking in the tub was mouldy because it was not properly applied the last time it was replaced and therefore the mould started to grow underneath the caulking. The letter from the home renovation professional also addressed this issue.

The Tenant's agent testified that the Tenant denies being responsible for the broken faucet. She stated that the damage was due to normal wear and tear. The Tenant provided a copy of an e-mail dated February 20, 2012, from a plumbing distributor in evidence.

Analysis

In an application such as this the burden is on the Landlord to provide sufficient evidence, on the balance of probabilities, that the tenancy should end for the reasons stated on the Notice.

The Notice discloses the following reasons for ending the tenancy:

1. The Tenant has caused extraordinary damage to the rental unit.
2. The Tenant has not done required repairs of damage to the rental unit.

The Landlord's agent submitted that the failure of the Tenant to advise him of the water problems on February 9, 2012, resulted in damage to the floors and ceiling tile that would have been avoided if the Tenant had advised him immediately. He also submitted that the Tenant did not do required repairs pursuant to a written demand that she do so.

The Landlord's agent made reference to Section 33 of the Act. This Section of the Act provides steps that a tenant must take in order to be successful in being reimbursed for amounts the tenant pays for emergency repairs. The Act does not provide a specific number of calls a tenant must make to advise a landlord of regular or emergency repairs. However, I caution the Tenant that e-mails are not considered to be effective forms of communication, nor are they considered a method of service under the provisions of the Act.

Based on the Tenant's agent's testimony and the documentary evidence provided by the Tenant, I am satisfied that the Tenant had reason to believe that the spilled water was not an emergency and that any damage had been avoided by mopping up the water. There was evidence of a prior incident in October, which was resolved quickly with no damage to the rental unit. I accept the Tenant's written submissions and the testimony of the Tenant's agent that there appeared to be a small amount of water on the floor on the evening of February 9, 2012, and that it appeared that the leak had stopped by the time the Tenant discovered it. I find that the Landlord has failed to provide sufficient evidence that the tenancy should end for the first reason provided on the Notice.

The Landlord provided an invoice for the cost of replacing the faucet, which indicates "existing faucet had broken from stem". The Landlord's agent submitted that this was evidence that the Tenant had been caused the faucet to break. The Tenant provided rebuttal evidence from a plumbing distributor which states "Upon inspection of the faucet you brought in, the broken mounting piece looks to be due to normal wear and tear over the years. This is pretty common for these parts and in my opinion is not the result of misuse on your part." I find that the Landlord has failed to provide sufficient evidence that the faucet broke due to the Tenant's misuse of the faucet.

The Landlord's agent submitted that the caulking in the bathtub required replacement because the Tenant failed to clean it properly. The Tenant provided rebuttal documentary from a renovations company that indicates an inspection was done on April 9, 2012 at the rental unit and it was found that there is mould and mildew beneath the caulk. The report states that it appears that whoever did the caulking did not ensure that the surface was completely dry which caused moisture to be trapped underneath the caulking, resulting in mould growth. I find that the Landlord has failed to provide sufficient evidence that the mould and mildew formed as a result of the Tenant's neglect.

I find that the Landlord failed to provide sufficient evidence that the tenancy should end for the second reason provided on the Notice.

I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the \$50.00 filing fee from the Landlord. Pursuant to the provisions of Section 71 of the Act, the Tenant may deduct **\$50.00** from future rent due to the Landlord.

Conclusion

The Notice to End Tenancy issued March 30, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant may deduct the cost of the filing fee in the amount of **\$50.00** from future 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: May 04, 2012.

Residential Tenancy Branch