



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century Performance Realty and Management
and [tenant name suppressed to protect privacy]

DECISION

Codes: CNC

Introduction The tenant has applied for an order pursuant to section 47(4) of the Residential Tenancy Act to set aside a Notice of End a Residential Tenancy May 30, 2013 and setting the end of tenancy for June 30, 2013. The tenant has also applied for an extension of time to bring the application pursuant to section 66 of the Act.

Issue(s) to be Decided

Is the tenant in time and entitled to any relief?

Is the landlord entitled to an Order for Possession?

Background and Evidence

A hearing was conducted in the presence of both parties. The tenant admitted service of the Notice on May 31, 2013 and brought this application on June 17, 2013. She was required to have disputed the Notice within 10 days of receiving it. The tenant testified that she was confused, upset and not well. She testified because of a foot injury, she had difficulty walking and did not drive. She testified she was not physically able to have brought the application until June 17, 2013. I have allowed the tenant's application for an extension of time to dispute the notice as I find it would be manifestly unfair to do other wise. The matter proceeded on the merits.

The landlord's agent D.D. testified that the tenant had caused water damage to the laminate flooring in the unit as a result of the overflow of the dishwasher which was used negligently by the tenant. D.D. testified that around the end of March 2013, as a result of a complaint by the tenant of a malfunctioning dishwasher, D.D. arranged for M.W. to attend and repair the dishwasher. D.D. testified that M.W. the landlord's repair person was only able to attend the unit to inspect it after 2 attempts because the tenant was either was not responsive, unavailable and had changed and the locks. M.W. testified that he attended the unit on April 20, 2013 and discovered that the dishwasher's timer was broken. He testified that it just failed without anyone's fault. He

also testified that the motor was also broken, likely because of plastic bits he found in the strainer from bread ties. He admitted that he had not inspected for water damage and did not know why the dishwasher would have overflowed exactly other than it failed to drain because of the timer malfunction. He testified that the dishwasher was full of old "black" water and that dishes were piled up on the sink. There was also a problem with the clothes washer which M.W. determined was from overloading, however that washer had not overflowed.

G.J. a flooring installer testified that he attended the unit and determined that the 8 year old laminate flooring was damaged from water and gave an estimated of \$ 2,940.00 for the installation of replacement flooring. G.J. was the original installer when the unit was constructed some 8 years ago.

D.D. testified that the dishwasher was 8 years old as well and needed to be replaced as the motor repair would be too expensive because of the tenant's misuse at a cost of over \$700.00. In addition D.D. submitted to the service calls for the clothes washer and dishwasher costing the landlord \$ 124.98 and \$ 133.98 were all occasioned by the tenant's neglect. D.D. submitted that these were all extraordinary damages caused by the tenant.

The tenant testified that she kept a clean house, enjoyed living in the unit and had not caused any damage. She testified that she only used the dishwasher every five days or so and that the first time she noticed a problem with it was on or about March 31 2013 when she observed that it had leaked water in the morning after being used overnight. She immediately cleaned up the water, tested it again and shut it off immediately when it started to leak again. She testified that she contacted the landlord that or the next day about this issue and has not used it again. She denies misusing the unit or that she ever put plastic debris of any kind in the dishwasher.

Analysis

The Notice to End a Residential Tenancy relies on sections 47(1)(d) and (e) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

Under section 32 of the Act, both the landlord and tenant have certain obligations with respect to repairing and maintaining a property. A landlord must ensure the property complies with health, safety and building standard laws and that the rental unit is suitable as living accommodation. The tenant must ensure that she maintains reasonable sanitary and cleanliness standards and repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Tenants are not responsible for repairing as a result of normal wear and tear. In order to end a tenancy for extraordinary damage under section 47(1)(f) of the Act, the landlord has the burden to prove the tenant caused extraordinary damage to the property.

Causing damage in itself is not the same as *extraordinary damage* and causing damage per se is not sufficient to end the tenancy; rather, the tenant is responsible to repair damage that she caused negligently or by breaching the duties enumerated in the Act. Extraordinary damage is damage of a greater degree than ordinary damage and must be caused by wilful or negligent acts of the tenant. The use of the word extraordinary in the Act designates the damage as an occurrence other than that which would be ordinarily experienced or would have been foreseen, anticipated or provided for in the contract of tenancy.

I find that in reliance upon all the evidence before me including testimony, photos and written statements that the damage to the flooring was caused by water damage and likely as result of the dishwasher overflowing. However it is less clear as to why that happened. M.W.'s testimony was that in his opinion it was likely as a result of the timer malfunction which failed through no fault of anyone. He also opined that the motor damage was caused by excessive debris but that itself would not cause water leakage.

It is the landlord who has the burden of proof on the balance of probabilities to establish cause. This onus must be satisfied strictly where the landlord seeks to end a tenancy.

I find that that the landlord has not proven that the tenant caused the dishwasher to leak or is responsible for any damage to the flooring. Logically it is unlikely that the tenant is responsible for any of the service call costs except perhaps regarding the clothes washer; a small part of the service call cost. The dishwasher is 8 years old and Policy Guideline 37 indicates that the life expectancy of a dishwasher is 10 years. Even if the tenant had negligently used the dishwasher causing the motor to fail she might only be responsible for a small fraction of the replacement cost given the age of the unit.

However I am not satisfied on the evidence whether the tenant caused that failure or rather that it occurred through normal wear and tear. For all of the above reasons I find that the landlord has not established that the tenant had *caused* extraordinary damage to the unit or property and I have therefore cancelled the Notice to End the tenancy.

Conclusion

I have cancelled the Notice to End the Tenancy dated May 30, 2013. The tenancy is confirmed and shall continue.

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: July 22, 2013

Residential Tenancy Branch