



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence. Two witnesses for the landlord also gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The landlord gave evidence that he served the tenant with a Notice to End Tenancy for Cause (the "Notice") dated December 30, 2013. The Notice specifies an effective date of January 31, 2014 and provides the following two reasons why the landlord seeks to end the tenancy:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.

The tenant applied to dispute the Notice on January 6, 2014.

The landlord gave evidence that the tenant damaged the door latches on the shared bathroom in the hallway of the tenant's floor and on the stairwell door on the tenant's floor.

Regarding the shared bathroom door, the landlord gave evidence that the door is normally open. When someone uses the bathroom, they close the door and it locks.

The landlord said that in approximately late December 2013, the tenant took pliers and bent the latch because he was bothered by the noise of the lock clicking closed. The landlord said that, as a result of the tenant's actions, the bathroom door did not close properly. The landlord said that he repaired the door latch promptly. The landlord says that the bathroom door is now louder than it was before the tenant tampered with it.

The landlord gave evidence that the tenant asked him to fix the door between the hallway and the stairwell so that the door would close silently. The landlord said he told the tenant he did not know how to do so. The landlord says the tenant taped the door latch so that it would not make a noise when it closed. The landlord says that the door is now louder than it was before the tenant tampered with it.

One of the landlord's witnesses says he got up in the middle of the night and saw the tenant painting the stairway banister. He also said the tenant poured paint on the floor.

The other witness for the landlord gave evidence that he saw the tenant apply paint to a window in the hallway and to banisters in the stairwell, sometime about five or six weeks prior to the hearing.

The tenant said the door latches were changed approximately two summers ago and they were quiet before they were changed. He said he has lived in the building for more than five years. The tenant agrees that he bent the latches on the washroom and hallway doors.

The tenant gave evidence that the building needs painting. Asked during the hearing whether he had asked the landlord to paint, the tenant said he had done so hundreds of times. The tenant agreed that he purchased paint himself and painted some common areas including the hallway and the washroom.

The landlord's evidence is that the latches on the washroom and hallway doors are original to the building and have never been replaced. There were renovations in 1989 but the latches were not replaced.

The landlord's evidence is that the tenant never asked him for paint.

The tenant's advocate gave evidence that the tenant's rent is paid for February 2014.

Analysis

Where a landlord seeks to end tenancy for cause, the onus is on the landlord to prove cause on a balance of probabilities. In this case, the landlord has described three activities by the tenant that he asserts put his property at significant risk and/or are illegal activities that damage the landlord's property. These three activities are:

- damaging the door latch of the shared bathroom
- damaging the door latch between the hallway and the stairwell
- painting areas of the building without the landlord's consent

I accept the evidence of the landlord, tenant, and witnesses and I find that the tenant damaged the door latches to the shared bathroom door and the hallway/stairwell door. I also find that the tenant painted common areas of the building without the landlord's consent.

However, the evidence presented at the hearing does not support that any of these activities put the landlord's property at significant risk. I understand significant risk to mean risk of fire, flood, or other event that might create a significant financial, legal, or other risk for the landlord. The activities described may cause the landlord some frustration and expense, but they are not grave enough to warrant ending the tenancy. The most worrisome of the activities is damage to the hallway/stairwell door since that door is intended to stay closed to prevent the spread of fire. However, the landlord did not give evidence that the tenant's actions prevented the door from closing, but only that the door is now louder when it closes.

I agree with the submissions of the tenant's advocate that the tenant's actions are not the type of "illegal activity" contemplated by the legislation. Although the tenant did not have the landlord's permission to bend the door latches or to apply paint to common areas, these are not in themselves illegal activities.

I find that the landlord has not shown cause to end the tenancy. I therefore order that the Notice is cancelled.

Conclusion

I order that the notice to end tenancy for cause is cancelled.

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 24, 2014

Residential Tenancy Branch

