



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 participated in the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The parties entered into a tenancy agreement on December 12, 2013. The tenant is obligated to pay \$625.00 in rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$321.50.

The landlord gave evidence that he served the tenant with a Notice to End Tenancy for Cause (the "Notice") by posting the Notice on the tenant's door on December 21, 2013. Section 90 of the Act provides that because the Notice was served by posting it on the tenant's door, the tenant is deemed to have received the Notice three days later on December 24, 2013. The move-out date specified on the Notice is January 31, 2014. The Notice specifies that the cause for ending tenancy is "Tenant has caused extraordinary damage to the unit/site or property/park".

The landlord gave evidence that the parties entered into an agreement at the start of the tenancy whereby the tenant would clean and paint the rental unit with a colour of the tenant's choosing, and the landlord would pay for materials. The landlord's evidence is that the tenant did not observe the agreement in that the tenant painted more walls and bought more paint than agreed, the tenant painted the inside of the suite door and the

kitchen cabinets without the landlord's permission, and the tenant did not remove the carpet as promised. The landlord's evidence is that the agreement specified the tenant would select a light brown or pastel colour and there was no agreement that the tenant would paint with more than one colour.

The landlord's evidence is that the rental unit is damaged because the tenant painted the inside of the suite door and kitchen cabinets which were previously varnished natural wood. He said the cost of restoring these areas would be more than the security deposit.

The tenant agrees with the landlord as to the terms of their agreement. He said that he bought paint and started painting, then discovered the paint colour was not correct so he returned to the paint store and had the paint colour altered. He said the alteration was free and he did not buy more paint. The tenant gave evidence that there were dime-sized holes in the suite door and he inquired at a hardware store how to repair them. He said the hardware store staff recommended spackle. He used spackle to fill in holes on both the inside of the suite door and on the kitchen cabinet frames. Since the spackle was white, he then painted the suite door and kitchen cabinet frames. The tenant's evidence is that the landlord did not say he could not repair the door and cabinet frames in that fashion.

The tenant agrees that he agreed to tear up the carpet and has not yet done so. He said he is still willing to do so, however the landlord appeared to be backing out of the agreement.

The landlord states that the use of spackle and paint has destroyed the appearance of the door.

The tenant provided photographs of the suite door and kitchen cabinets. The photographs indicate that the door and kitchen cabinet frames are neatly painted.

Analysis

Where a landlord seeks to end a tenancy for cause, the onus is on the landlord to demonstrate that cause exists. In this case, I find that the landlord has not proven that the tenant caused extraordinary damage to the rental unit.

There is no allegation that the tenant in any way caused wilful damage to the rental unit. The landlord's concern is apparently that the tenant used poor judgment in employing spackle and paint on previously varnished surfaces.

I find that the parties did not reach a clear agreement about exactly which areas of the apartment would be painted and how the repairs were to be carried out. I find that the parties had an unfortunate misunderstanding about the work that the tenant would perform, but the work performed by the tenant does not constitute damage to the unit.

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 07, 2014

Residential Tenancy Branch

