



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), for a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The hearing process was explained to the above listed parties and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

At the outset of the hearing, the tenant confirmed receiving the landlord's documentary evidence; the tenant did not file separate documentary evidence. The landlord did not raise any issue about the service of the tenants' application.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-As a preliminary issue, I have determined that the portion of the tenants' application dealing with a request for monetary compensation is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenants' Application and dismissed that portion of the tenants' request for monetary compensation, **with leave to reapply**.

The hearing proceeded only upon the tenants' application to cancel a Notice to End Tenancy for Cause.

Preliminary matter-The parties were given instructions at the beginning of the hearing that they were to allow the other party the opportunity to testify or for me to speak without interruption during the hearing. The parties were advised that although they

would most likely disagree with everything the other party said, they were to make a note of that disagreement in order to respond during their portion of the hearing.

Despite these instructions, the both parties began interrupting the hearing from the beginning with comments and remarks.

I cautioned both parties that the continued interruptions would result in them being placed in the mute mode. The tenants ultimately stopped their interruptions well into the hearing; however the interruptions continued from the landlord throughout the hearing, until the landlord was placed on mute, but allowed to listen, while the tenants finished their response to the landlord's rebuttal of their testimony, pursuant to Section 8.7 of the Rules of Procedure.

I note that the landlord had testified in full in support of his Notice and in reply to the tenants' response.

Preliminary matter #2-Although the tenants filed an application in dispute of and seeking cancellation of the Notice and the landlord supplied evidence in support of his Notice, neither party submitted a copy of the Notice with their evidence; however, I asked both parties if the Notice was before them at the hearing and both parties agreed that it was.

I then asked questions of both parties in order to gather necessary information about the contents of the Notice, with the understanding that all information was to be agreed upon and with the tenants being allowed to telefax their Notice directly after the hearing.

The tenants did telefax the Notice and the contents were as described by both parties at the hearing.

Issue(s) to be Decided

Have the tenants established an entitlement to have the Notice to End Tenancy for Cause cancelled and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on June 18, 2011, monthly rent began at \$1600, was raised to \$1650, and then again to \$1850 during the tenancy, and the tenants paid a security deposit of \$800 at the beginning of the tenancy. I note that the tenants have applied for monetary compensation for their claim that they have overpaid monthly rent through the landlord's illegal rent increase; however, as previously noted, that portion of the tenants' application has been severed and dismissed, with leave to reapply.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenants a 1 Month Notice to End Tenancy for Cause. The landlord testified that they issued the tenants the Notice on January 29, 2014, listing an effective

end of tenancy on February 28, 2014. The tenants testified that the Notice was dated by the landlord on February 29, 2014. The landlord agreed that he made a mistake on the date of the Notice.

The causes listed on the Notice alleged that the tenants have caused extraordinary damage to the rental unit and have not done required repairs of damage to the rental unit.

The landlord's relevant documentary evidence included the written tenancy agreement, a note to the landlord regarding advice received from the Residential Tenancy Branch ("RTB") about overpaying rent, and photographs of the interior and exterior of the rental unit. I note that the landlord submitted other documents, but the receipts did not deal with the issues contained in the Notice.

As to the allegations of extraordinary damage by the tenants, the landlord submitted that the female tenant is now using a seat when taking a shower as of last year after a surgery, and that the seat has caused holes in the bathtub. The landlord further submitted that as that tenant cannot properly use a shower curtain due to the seat, the water from the shower is dripping onto the floor, causing water to seep through the ceiling in the washroom downstairs.

The landlord submitted that the water leak from the upper washroom, has caused the ceiling to be completely torn down and is creating a potential fire hazard with the light fixture in the lower washroom.

The landlord contended that he called a plumber to the rental unit, who informed him the water was coming from the upper washroom as there was no leak in the pipes.

The landlord submitted that he called the male tenant and instructed him to fix the lower bathroom ceiling, upper washroom floor, and the holes in the bathtub and to remove the tub seat, with no results.

In response to my question, the landlord said that the photographs depicting the alleged damage were taken in October 2013.

In response, the submitted that there has been an issue with the bathtub tap in the upper washroom since the tenancy began, as the water comes out of the bath and shower tap at the same time. The tenant submitted that the malfunctioning taps cause water to spill over onto the floor, where the linoleum does not meet the tub, causing a gap in the flooring.

The tenant submitted that she informed the landlord of the issue with the taps and gap in the floor, but that he has resisted making repairs. The tenant submitted that the landlord did have a plumber attend at one point and that she mentioned the malfunctioning tap, but that the plumber said that he was not authorized by the landlord to replace the tap.

The tenant submitted that water has been leaking into the lower washroom for 2 years, yet the landlord has never attempted to correct the problem.

The tenant denied that water is leaking to the washroom floor when she is showering, as the seat is a two piece set, and that that curtain goes in between the two pieces.

The tenant denied there are holes in the bathtub, as the marks shown in the landlord's photographs are scratches she was unaware that her seat was causing due to the wearing of the rubber tips.

In response to the tenant's rebuttal, the landlord submitted that the tenants called him two weeks into the tenancy about a leak, and that he did not find a leak.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The landlord has the burden of proving on the balance of probabilities that there were sufficient grounds to end this tenancy for the stated causes.

In the case before me, I find the landlord submitted insufficient evidence to demonstrate that the tenants have caused extraordinary damage to the rental unit and have not done required repairs of damage to the rental unit.

In reaching this conclusion, the landlord testified, giving a version of events, and the tenants testified, giving a differing, equally probable version of events.

I did not find that the landlord's photographic evidence allegedly depicting damage particularly compelling as the tenants provided plausible disputing testimony explaining the possible source of the water leak.

I was particularly influenced by the lack of a plumber's report proving that the tenants' possible misuse of the upper bathtub caused the leak in the lower washroom, since the landlord said that he had a plumber attend the rental unit. I was further influenced by the timing of the issuance of the Notice, as the landlord said the photographs depicting the alleged damage were taken in October, according to the landlord, and the Notice was not issued until January 29, 2014. This led me to conclude that possibly other issues have arisen between the parties, not related to the alleged causes, as there appeared to be no sense of urgency on the landlord's part in seeking to end the tenancy for the reasons stated.

Neither party provided evidence of written communication between each other regarding the issues alleged or documentary evidence in support their position that there was

cause to end the tenancy; however, I find this fact was more of a detriment to the landlord as the landlord does bear the burden to support his Notice.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated February 29, 2014, listing an effective move out date of February 28, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Due to their successful application, I grant the tenants recovery of their filing fee of \$50 and I direct them to deduct the amount of \$50 from their next or a future month's rent payment in satisfaction of their monetary award.

Conclusion

The portion of the tenants' application seeking cancellation of the Notice has been granted as I have cancelled the landlord's 1 Month Notice to End Tenancy for Cause.

The portion of the tenants' application seeking monetary compensation was severed, and it is dismissed, with leave to reapply.

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: March 20, 2014

Residential Tenancy Branch

