



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Realty Executives Vantage
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, ERP, CNC, RR, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order allowing a reduction in rent, and for recovery of the filing fee.

The tenants and the landlord's agent (hereafter "landlord") attended, the hearing process was explained 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 to the other's evidence, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

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 matter- I have determined that the portion of the tenants' application dealing with a request for orders for repairs and emergency repairs and an order authorizing a reduction in rent are 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 those orders and authorization, **with leave to reapply**.

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

Issue(s) to be Decided

Have the tenants established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

The tenants testified that this tenancy began on November 1, 2013 and monthly rent is \$1000. The landlord agreed.

Pursuant to the Residential Tenancy Branch rules of procedure, 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 Notice was dated April 10, 2014, was delivered via personal delivery on that date to another tenant not listed in the application, according to the landlord, listing an effective end of tenancy on May 10, 2014.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to May 5, 2014.

The causes as stated on the Notice alleged that the tenants have not done required repairs of damage to the rental unit.

Landlord's evidence-

According to the written submissions of the landlord, the owner of the residential property had a tenant, DG, who lived in the rental unit for three years, with that tenant allowing another person, GO, to move into the rental unit for the summer the year prior, without permission. GO was said to be another tenant by the landlord, although he was not listed as a tenant/applicant on the tenants' application for dispute resolution and did not appear at the hearing.

The written submissions go on to state the original tenant, DG, was moving out on November 1, 2013, and that he allowed two unknown persons move into the rental unit, without the owner's permission. Those two people are the listed tenants here.

The landlord submitted that she, the owner, and DG were proceeding to a walkthrough of the rental unit on November 1, and discovered that the house was "filthy dirty" in all rooms. The landlord and owner then went downstairs, and were shocked at the condition. According to the landlord, the owner had put in new carpets just prior to the tenancy starting 3 years prior, and that DG allowed GO to move in with a dog.

The landlord submitted that the carpet was ruined and had dog feces and urine, which required that the carpet be thrown out.

The landlord stated that DG informed her and the owner that he had purchased laminate flooring to replace the carpet, and that GO and the listed tenant here, AL, had agreed to install the laminate flooring.

The landlord agreed that a tenancy formed when the tenants handed the owner \$1000 in cash for rent for November 2013, without a signed tenancy agreement.

The landlord submitted that she has issued multiple warning letters to the tenants that the carpet required replacing and that the laminate flooring had to be installed. Despite the repeated written warnings, all supplied into evidence by the landlord, the tenants have failed to make the agreed upon repairs. Due to the lack of floor repairs, as required under the Act according to the landlord, the landlord issued the 1 Month Notice to the tenants.

The landlord's relevant evidence included photos of the carpet in the rental unit, email communication between the parties, and a copy of the Notice.

Tenants' response-

The tenant disputed the age of the carpet, as stated by the landlord, and that they, the tenants, have made diligent efforts to comply with the landlord's request, although it would be very expensive.

Included with the tenants' relevant documentary evidence was a move-in condition inspection report, for the beginning of this tenancy, for an inspection conducted on November 12, 2014.

Analysis

Under section 47(1)(g), a landlord may issue to the tenant a notice seeking to end the tenancy if the tenant has not done required repairs of damage to the rental unit, as required under section 32 of the Act, which deals with landlord and tenant responsibilities prior to and during the tenancy.

The landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove the alleged cause listed on their 1 Month Notice to End Tenancy for Cause, in this case that the tenants have not done required repairs of damage to the rental unit.

I grant the tenants' application and cancel the 1 Month Notice to End Tenancy for Cause, dated April 10, 2014, as I find that the landlord has not presented sufficient evidence to demonstrate that the tenants have not done required repairs of damage to the rental unit.

In making this determination, I have reviewed the incoming condition inspection report for these tenants, and find that many issues with this rental unit were noted at the beginning of this tenancy. For instance, there were many notations of scratches, scrapes and damage, as well as black mold and dirty conditions. I took exceptional note that the carpet in one of the bedrooms was stained and that doors were missing and windows were broken.

I therefore could not determine if the landlord complied with their responsibility under section 32 of providing, at the start of this tenancy on November 1, 2013, a residential property in a state of decoration and repair that complied with the health, safety and housing standards required by law.

It was upon the landlord to arrange for a move-out inspection report for the outgoing tenant, DG, and then to arrange the move-in inspection with the incoming tenants. As this did not appear to be the case, I therefore could not determine what damage, if any, for which these tenants were responsible or if the damage was pre-existing when this tenancy began. The landlord's written submission suggests that the damage to the carpet existed when DG, the original tenant, moved out and prior to the new tenants moving in, creating a new tenancy.

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

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated April 10, 2014, 2013, is 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*.

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

Conclusion

I grant the tenants' application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby set aside with the effect that the tenancy will continue until ended in accordance with the *Act*.

The tenants are directed to deduct \$50 from a future month's rent payment.

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 8, 2014

Residential Tenancy Branch

