



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated June 27, 2014 to be effective July 31, 2014 and the tenant confirmed it was served by posting it on the door on June 27, 2014. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on July 7, 2014 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced on June 1, 2013, rent is \$800 a month and a security deposit and pet damage deposit each in the amount of \$400 was paid in June 2013. The landlord served a Notice to End Tenancy for the following reason:

- a) The tenant has not done required repairs to the unit.

The unit is sublet by the upstairs landlord. He said the tenant's have been negligent in letting the water escape from the shower which has resulted in drywall damage and significant mould problems. He said in April 2014, a workman entered and did some caulking but he does not know if there was drywall damage at that time. On June 27,

2014, he entered the unit and found a hole and that the drywall and baseboard was rotting. He gave the tenants a repair list itemizing the repairs that had to be done; the bathroom repair was listed as a priority and they were advised to fix it within 10 days. They replied that the time allowed was unreasonable and that they believed it was the landlord's responsibility to repair, not theirs, as they were not negligent. The landlord provided a large number of photographs of the alleged damage; they were submitted to the Residential Tenancy Branch late and the tenants say they never received them. They are not labelled or identified and the photographer is not identified.

The tenants said there were problems with some leaks which were fixed. An email dated April 3, 2014 mentions the leak in the bathroom. Apparently caulking was done also at that time but a mould issue was not mentioned. The tenants say they have done the repairs by washing the wall with soap, bleach and water to kill any mould, then using special paint and installing splashguards and caulking. They provided photographs showing completed repairs. The landlord said it took 3 months and they only did it a couple of weeks ago; he also said mould is probably under the tub too and the repair is not good enough to address the problem of mould. The tenants said the report only mentioned mould by the bathtub and they have repaired the wall.

Included with the evidence is a copy of the Notice to End Tenancy, several emails, an inspection report with a request to repair and a number of photographs.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the landlord has not satisfied the onus. Although the landlord alleged there was mould caused by the tenant's negligence in not containing the shower water, I find insufficient evidence to prove this allegation. The emails indicate that there was at least one leak in the bathroom and it had to be repaired and caulking also had to be done in April. Although the tenants contended the damage was not caused by their negligence, I find they made a good effort to address the issue; first they contacted a repair person and then they fixed it themselves. The photograph they provided shows it has been repaired. Although the landlord contended it was not a proper repair, I find insufficient evidence to support his statement as there are no reports from professionals on the mould issue or on the cause of the problem. I find the photographs of the landlord were provided late to the Residential Tenancy Branch and the tenant did not receive them so I give little

weight to this evidence. I set aside and cancel the Notice to End Tenancy for cause dated June 27, 2014 for the above reasons.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy for cause is hereby cancelled and the tenancy is reinstated. I find the tenant entitled to recover their \$50 filing fee.

I HEREBY ORDER that the tenant's rent for October 2014 is reduced from \$800 to \$750 to recover the filing fee for this hearing.

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: September 09, 2014

Residential Tenancy Branch

