



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MND, FF& FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant by posting on August 31, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an Order cancelling the one month Notice to End Tenancy dated August 31, 2014?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on July 1, 2013. The rent present rent is \$613 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$295 at the start of the tenancy.

The landlord testified that the tenant has damaged the carpet when she permitted her nephew to carry a garbage bag that subsequently spilled to the bin outside. The landlord hired a carpet cleaner and a blower because the carpet was not drying as fast as it should. The tenant has paid the cost of the carpet cleaner but refuses to pay the cost of the blower. The landlord claims the sum of \$49 for the cost of the blower. The tenant disputes the cost of the blower stating she did not agree to it and it was not necessary as it was summer at the time.

The landlord also claims the sum of \$157.50 for the cost of replacing a window. The Condition Inspection Report prepared at the start of the tenancy does not indicate a crack in the window. The tenant disputes this claim. She testified she did not cause the crack. She submits the crack was present at the start of the tenancy but she did not see it because the curtains covered the window. She submits that it may have been caused because of expansion and contraction.

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(f) and (g) of the Residential Tenancy Act. That section provides as follows:

47(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

Tenant's Application:

After carefully considering the disputed evidence presented I determined the landlord has failed to establish sufficient cause to end the tenancy. For the reasons which follow I determine the tenant is responsible for the cost of the blowers. However, in my view the leakage of the garbage does not amount to extraordinary damage. Further, it does not amount to a failure to repair damage to the rental unit within a reasonable period of time. The landlord did not give the tenant an opportunity to clean the leakage before he hired the carpet cleaner and blowers. Finally, I determined the landlord has failed to prove that the tenant caused the crack to the window. The tenant is not an insurer for the landlord. The landlord acknowledged there has been damage to the windows in other units and that repairs have to be made to the building. The tenant's explanation as to why the crack was not recorded in the Condition Inspection Report is reasonable. The landlord failed to present sufficient evidence as to how the tenant damaged the window.

In summary I ordered that the one month Notice to End Tenancy dated August 31, 2014 be cancelled. The tenancy shall continue.

Landlord's Application:

Analysis - Order of Possession:

I dismissed the landlord's application for an Order of Possession as, for the reasons set out above I ordered that the One Month Notice to End Tenancy be cancelled.

Analysis - Monetary Order and Cost of Filing fee

With regard to each of the landlord's claims for a monetary order I find as follows:

- a. I determined the landlord is entitled to recover the cost of the blower in the sum of \$49. I determined the tenant or person permitted on the property by the tenant is responsible for the garbage leaking. The tenant acknowledged responsibility by her conduct in paying for the cost of the carpet cleaner. I determined the landlord acted reasonably in obtaining the blower and the tenant is responsible to pay this claim.

- b. I dismissed the cost of repairing the window for the reasons set out above. The landlord failed to prove the damage was caused by the tenant. The tenant's explanation was reasonable.

In summary I granted the landlord a monetary order in the sum of \$49 plus the sum of \$25 in respect of the filing fee (reduced to reflect the partial success of the landlord for a total of \$74.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: October 28, 2014

Residential Tenancy Branch

