



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for an Order cancelling a Notice to End Tenancy for Cause issued September 17, 2014 (the "Notice").

The Tenant also sought an Order for more time to make her application. She was personally served on September 28, 2014 and since she filed her Application within the 10 days required under the Act she does not require an Order for more time.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that where a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord will present his or her case first.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

LANDLORD'S EVIDENCE

The Landlord testified that the parties entered into a tenancy agreement; however, this agreement was not in evidence. The Landlord stated that the tenancy began approximately three years ago, in September 2011, and the Tenant paid a security deposit of \$575.00 also on September 1, 2011.

The reasons cited in the Notice are as follows:

- the Tenant is repeatedly late paying rent;
- the Tenant has caused extraordinary damage to the unit/site or property/park;
and
- the tenant has not done required repairs of damage to the unit/site.

The Landlord alleged that the rent payments were paid late every month since September 2011 and that on five separate occasions the rent was paid after the 10th of the month. The Landlord stated that he did not issue a 10 Day Notice to End Tenancy sooner as he and the Tenant's spouse, J.L., worked together.

The Landlord testified that the Tenant has damaged the rental unit as follows:

- The sun deck was damaged by snow removal such that the stone effect vinyl has been partially removed. The Tenants did not advise the Landlord of this in a timely manner.
- The handle on the sundeck door is broken.
- The windows and blinds in the bedrooms are moldy as the Tenant does not heat those bedrooms.
- The door trim has come off in almost every room and where the Tenant has made repairs, she has done so with nails which are too large for the trim.

- The downstairs bathroom had a mold patch because it was leaking above for approximately one year. The Landlord testified that the Tenant has now made this repair.
- There is a hole in the stairwell wall due to a “scuffle”.
- The light in the basement bedroom is broken.
- The Tenant has garbage stacked three feet high in the garage and outside the rental unit.
- The Tenant had a derelict vehicle on the property.
- The garage door was damaged.
- The exterior vinyl siding was damaged.

The Landlord did not provide a copy of the move in condition inspection report although he stated that he had bought the house six months prior to the start of the tenancy and that he renovated the entire house.

The Landlord submitted photos which depicted garbage outside the rental unit, a damaged garage door and the sundeck. He did not provide any further photos of alleged damage.

The Landlord testified that he spoke to the Tenant about the above and she attempted to make the repairs, but aside from the bathroom ceiling repair, the remaining repairs were not acceptable. He estimated that it will take two weeks to complete the repairs.

The Landlord stated that the Tenant gave notice that she was going to move out and signed over her security deposit but then changed her mind and did not move out.

TENANT'S EVIDENCE

The Tenant testified that the Landlord never raised the late payment of rent as an issue before serving the Notice and that the Landlord and J.L. had a “deal” with respect to rent. Further the Tenant alleged that the Landlord initially refused to accept rent for November 2014, but had, at the time of the hearing accepted he rent.

The Tenant stated that she did not intend to move out, but thought when she received the Notice that she had to. When she called the branch she was informed she could dispute the notice, which she did by filing her application on October 8, 2014.

The Tenant stated that all of the repairs have been made as requested by the Landlord, except the siding repair as she has no knowledge of this damage, nor has the Landlord ever raised this with her. The Tenant testified that the moisture and mold issues are as a result of the single paned windows, and that she has done her best to clean the moisture and mold as it appears and will continue to do so. She stated that the Landlord was aware of the need to replace the windows.

The Tenant testified that the deck issues originate from the product used, as the vinyl was cracking along the seam lines. She denied damaging the deck during snow removal and stated that she did not own a shovel. She says that when she brought the deck condition up with the Landlord, he told her to rip it up, which she attempted to do. She stated that some of the deck material remained and it was after she attempted to remove the material (at the Landlord's request) that he took the photo submitted in evidence. She says that he has now put carpet on the outside deck which is constantly wet but that in any case the torn floor covering is no longer visible.

The Tenant further testified that the water damage in the bathroom was because the upstairs faucet was incorrectly installed. She said that she and J.L. tended to the ceiling repair as well as the faucet, even though neither were their responsibility.

The Tenant stated that the door handle on the sliding glass deck door broke due to age, but that it is now fixed.

The Tenant testified that in September 2014 the Landlord attended the rental unit and said he was happy with the repairs. According to Tenant, after this visit he returned and told the Tenant that he and his girlfriend separated and that he intended to move back into the rental unit. The Tenant further stated that the Landlord told her he needs to prepare the rental unit for sale. She believes that he issued the Notice as he does not want to give her a month's rent as provided for in section 51 of the Act.

The Tenant's mother, D.B., also testified. She testified that the Tenant had done all the requested repairs. She also testified that she has not observed damage to the siding as alleged by the Landlord.

Analysis

The Landlord bears the burden of proving the Notice should be upheld. In this case, the Tenant alleged that the Landlord and J.L. had an arrangement regarding the payment of rent. The Landlord conceded that he did not act on the late payment of rent sooner as he worked with J.L. I find that the Landlord has waived reliance on this provision.

I accept the Tenant's evidence as well as her mother's testimony that the Tenant has completed the requested repairs. I also find that the damage was due to reasonable wear and tear and not due to deliberate damage or neglect by the Tenant. I find that the Tenant is not responsible for the deck repair.

The Landlord testified that he had completed a move in condition inspection report yet did not provide this report in evidence. Such a report would have provided me with evidence of the condition of the property at the start of the tenancy. In failing to provide the move in inspection report, I find that the Landlord has failed to meet the burden of proving the Tenant has caused extraordinary damage to the rental unit and has not done required repairs of such damage. As such, the Tenant's request for an Order cancelling the Notice is granted and the Tenancy will continue until ended with the Act.

The Tenant is cautioned to honour her obligation to pay rent in accordance with the Tenancy agreement and the Landlord is cautioned that he cannot refuse rent.

Introduced in evidence was a letter from the Landlord to the Tenant dated November 1, 2014 wherein the Landlord wrote that rent would increase from \$1,150.00 to \$1,250.00. Notably, this is an 8.6% increase which exceeds the permitted increase provided for in the *Residential Tenancy Act Residential Tenancy Regulation*, and as such I find this rent increase to be contrary to law and unenforceable. The Rent shall remain at \$1,150.00 per month.

The Landlord is cautioned to honour his obligations under sections 49 and 51 should he wish to end the tenancy for his own use.

The Tenant, having been successful in her application is granted a Monetary Order in the amount of \$50.00 for the fee paid to file her application. She is to be credited this amount from her next month's rent.

Conclusion

The Landlord failed to meet the burden of proving the Notice should be upheld. The Notice is cancelled. The Tenant shall be credited \$50.00 for the fee paid to file the application.

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: December 15, 2014

Residential Tenancy Branch

