



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cheungs Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant application: MNDC, RP, LRE, O, FF

Landlord's application: OPC, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord's representative and the tenants called in and participated in the hearing.

Preliminary matter

The tenants named E.C., an individual as landlord although the tenancy agreement and written communications are in the name of a corporate landlord. The corporate landlord is the applicant in the landlord's proceeding. The individual named in the tenant's claim is the representative of the corporate landlord and he has full knowledge of the matters in question, I have amended the tenant's claim to name the corporate landlord as the sole respondent because there is no prejudice to the landlord in so doing. The landlord has knowledge of the tenant's claim and has had the opportunity to respond to it.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Should the landlord be ordered to make repairs?

Should there be conditions placed upon the landlord's right to enter the rental unit?

Is the landlord entitled to an order for possession pursuant to a Notice to End Tenancy for cause dated November 26, 2014?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began on January 1, 2012. The monthly rent is \$750.00 and the tenants paid a security deposit of \$375.00 and a pet deposit of \$375.00 at the start of the tenancy.

The tenants submitted their application for dispute resolution on December 2, 2014. They claimed in the application that they have suffered from an infestation of rats and mice in the rental unit since November, 2013. The tenants testified that they reported the issue to the building manager and the landlord gave them some glue traps, but refused to do anything more, even after the tenants reported it as an ongoing problem. The tenants requested that the landlord hire a professional exterminator, but he refused and told them they had to buy their own traps and steel wool to seal holes and poison to kill the rodents. The tenants said they have taken all the suggested steps and bought the traps and poison at their own expense, but the rodents continue to be a problem.

The tenants testified that on September 6, 2014 a pipe broke under the sink in the bathroom and water flooded out of the bathroom into the living space, soaking the carpet. The water also flowed into the kitchen and covered the linoleum. The tenant said there was so much water that it leaked out of the apartment, which is on the first floor and dripped through the floor into the garage below the apartment. The tenant testified that the carpet was soaked through and was squishy to walk on. The tenants reported the flood to the landlord's resident manager. The tenant said that the resident manager was with her when she observed water leaking from the rental unit into the garage. The tenants said the apartment was uninhabitable and they left with their dogs the night of the flood. The tenant, S.L. went back the following day and met the landlord's representative at the rental unit. The landlord's representative brought a maintenance man with him. The tenant reported the broken pipe. She said the landlord acknowledged the problem. The tenants testified that the landlord fixed the pipe, but did nothing about the flooding and did not dry the carpet. The tenants said they stayed for several days with the tenant's parents waiting for the rental unit to be fixed. The tenant testified that when she went back to the rental unit the carpet was still wet and emitted a pungent smell that filled the apartment and made it impossible to breathe. The tenant testified that she sought advice from the Residential Tenancy Branch before she wrote a letter to the landlord on September 12th. In the letter to the landlord the tenant said:

As you know, on the evening of September 6th 2014, the pipe under the bathroom sink burst, which resulted in water seeping into the bedroom, living room drenching the carpet and kitchen which drenched the linoleum. There was so much water in the apartment due to this issue that I noticed it drip into the garage below us.

The tenant noted that the landlord attended the next day with a plumber to fix the pipe but she said that he did nothing about the carpet. She said in the letter that:

And because the carpet wasn't cleaned, there might be mold growing, as it is at this moment still wet and the smell of the wet carpet is too much. Now I have called the tenancy board about this issue already, and they have advised that I write to you and request, for compensation, as due to this issue I have not been able to stay there comfortably and it has also affected my health.

The tenant demanded that the landlord take steps to fix the carpet by Friday, September 26, 2014 or she would take action through the Residential Tenancy Branch.

The landlord's representative wrote a letter to the tenant dated October 14, 2014. He said in the letter that when he entered the rental unit with his plumber a few days after the flood, the carpet was not wet and there was no sign that it had been wet. He also said that the pipe under the sink did not burst as claimed by the tenant and the water that leaked was the result of a clogged drain pipe. The landlord said that the tenant's claim that she could not live in the rental unit for health reasons was "preposterous" for two reasons:

1. There was no water damage to the carpet as you claim. If there was any indication that the carpet was wet, I could simply have dried it out with a floor fan which is common practice.
2. I have seen the apartment with dog urine on the carpet and feces on the bathroom floor on a previous visit when I updated a smoke alarm in the apartment. There was dog food dropped all over the floor. The apartment was hardly a picture of cleanliness.

In a further letter to the tenant dated October 23, 2014, the landlord reported that after speaking to the co-tenant by phone to confirm his intention to enter the rental unit, he inspected the carpet in the company of his building manager on October 17, 2014. He said that he saw no sign of damage or mould due to the "plumbing issue" from September. The landlord said in the letter that he saw a stained "pet pad" in the bathroom and he said that if he saw further evidence of the tenants' dogs urinating or defecating in the apartment he would seek to terminate the tenancy. At the hearing the landlord testified that he did not notice any objectionable odour from the carpet, or see any signs of mould in the carpet due to flooding. The landlord testified that when he entered the apartment on the Monday following the September 6th water leak, the carpet was not at all wet; it was dry to the touch. The landlord said that he did not believe there was any extensive flooding, as reported by the tenant.

The tenant responded by letter dated November 10. She objected to the landlord's "illegal" entry into the rental unit. The tenant disputed the landlord's finding with respect to the carpet because he is not a mold or carpet damage expert and stated that: "the water flooded into the carpet connector "hall" from the bathroom to the bedroom carpet, parts of the bedroom carpet, dining room and living room carpet." In the November 10th letter the tenant said that because she had been unable to live in her apartment from September, "until now" she wanted the landlord to lower the rent until the damage is repaired, the mouse issues are solved and to reimburse her \$26.50 per day from September 9th until the landlord resolves the issue.

The tenants submitted a quantity of photographs to show the presence of mouse droppings throughout the rental unit and what they submitted was evidence of mold and carpet flooding.

According to the monetary order worksheet submitted with her application for dispute resolution, the tenants claimed the following amounts:

| | |
|--|------------|
| • Predator rat and mouse killer: | \$11.20 |
| • Mouse trap: | \$6.20 |
| • Glue traps: | \$15.00 |
| • Rent for 3 months and 29 days: | \$2,915.00 |
| • Reimbursement for rent paid for 4 months and 19 days: | \$1,910.00 |
| Total: | \$4,857.40 |

The tenant submitted copies of receipts for amounts claimed to have been paid to the tenant's parent for accommodation for a portion of September and for subsequent months at a monthly rate of \$400.00.

The landlord served the tenants with a one month Notice to End Tenancy for cause dated November 26, 2014. The Notice to End Tenancy was served on November 26, 2014 by attaching a copy to the door of the rental unit. The Notice to End Tenancy required the tenants to move out of the rental unit by December 31, 2014. The grounds for the Notice were that the tenants had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that they had put the landlord's property at significant risk. The landlord has complained that the tenants have allowed their dogs to defecate and urinate inside the rental unit.

The tenants submitted their application for dispute resolution on December 2, 2014. The tenants sought various remedies, including a monetary award, but they did not apply to cancel the one month Notice to End Tenancy.

Analysis

The testimony of the parties as to the extent of a flood in the rental unit is highly divergent. The tenant testified that there was a major flood due to a burst pipe that soaked carpets throughout the rental unit. The landlord's representative testified that there was no burst pipe; there was an overflow from a blocked drain and when he attended the rental unit with a plumber the day following the event, the carpets in the rental unit were dry to the touch. He disputed the tenants' testimony about mold and a pungent odour in the rental unit. He said that he inspected the rental unit and particularly the carpets on October 17th and could not verify the tenant's complaints. The landlord's representative said that there was no smell of mold or other strong odour in the rental unit.

I did not find the tenants' testimony as to the extent of the flood in the rental unit to be credible. Had the flooding been as extensive as the tenants claimed, the carpet would still have been soaking wet on the following day. I find it highly unlikely that a landlord, acting purely out of concern for his own asset would have ignored a problem of that magnitude. I accept and prefer the landlord's evidence that there was a minor leak from a blocked drain, not an extensive flood from a burst pipe.

I do not find that the tenants were justified in moving from the rental unit due to the water leak. The tenants have not shown that the rental unit was rendered uninhabitable because of mould or the odour from the carpets. The landlord investigated the tenants' complaints and inspected the rental unit on October 17th. He reported that there was no odour of moldy carpets. The tenants have claimed both the rent for the rental unit and an amount said to have been paid for alternate accommodation since mid-September. I find that the tenants have failed to prove, on a balance of probabilities, that they are entitled to a reimbursement of rent. I note as well that they are seeking a double recovery because the tenants have asked for a return of rent as well as payment for alternate accommodation.

There is one element of the tenants' claim that I do accept, however. The tenants have presented convincing evidence that the rental unit has been plagued by a rodent infestation. When the tenants reported the problem to the landlord he responded by providing a package of glue traps. The photographic evidence shows, by the quantity of mouse droppings, that there was a serious problem, yet the landlord merely told the tenants to buy poison and other supplies and deal with the problems themselves. I find that the rodent problem was a serious and continuing issue that interfered with the tenants' quiet enjoyment and use of the rental unit and I find that it constituted a health issue that warranted the intervention of a professional pest control inspection at the least; instead the landlord gave the tenants casual verbal advice and left it to them to

buy supplies and implement their own treatment program. I find that the tenants are entitled to recover their out of pocket expenses for treatment products and to an award to reflect the their loss of use and quiet enjoyment of the rental unit. The tenants claimed \$32.40 for expenses for supplies and I find they are entitled to recover that amount. I find that the tenants are entitled to an award in the amount of \$1,000.00 for the ongoing untreated rodent problem over the duration of the tenancy. The tenants are entitled to recover the \$50.00 filing fee for their application for a total monetary award of \$1,082.40.

The landlord has applied for an order for possession pursuant to the Notice to End Tenancy for cause. The tenants acknowledged that they received the Notice to End Tenancy. They did not apply to dispute the Notice to End Tenancy and pursuant to section 47(5) they are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the evidence at the hearing, the tenants have effectively ceased living at the rental unit. Because the tenancy has ended, I dismiss the remainder of the tenants' claims for a repair order and an order restricting the landlord's access to the rental unit.

Conclusion

I grant the landlord an order for possession effective two days after service on the tenants. This order may be registered in the Supreme Court and enforced as an order of that court. The landlord is entitled to recover the \$50.00 filing fee for its application and I set off the \$50.00 fee against the amount of the monetary award in favour of the tenants. This leaves a net amount of \$1,032.40 that is due to the tenants and I grant them an order under section 67 in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that court. All other claims by the tenants are dismissed without 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: February 2, 2015

Residential Tenancy Branch

