



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, O

For the landlord – OPC, MND, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for cause and other issues. The landlords applied for an Order of Possession for cause; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; other issues; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession based on the reasons given on the One Month Notice to End Tenancy?

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to an Order permitting them to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started in March, 2005. Rent for this basement unit is \$700.00 per month due on the 1st of each month. The tenant paid a security deposit of \$325.00 on March 15, 2005. A move in Inspection report was not completed at the start of the tenancy.

The landlord SB testified that the landlords' contractor had to enter the tenant's unit in August, 2014 due to a water leak from another unit. The tenant was away from home at the time. Upon entering the tenant's unit the contractor found feces and urine all over the carpet from the tenant's rabbits. The tenant was given permission to have one pet rabbit at the start of the tenancy. The smell was so bad in the unit that the landlords' contractor had to leave.

The contractor returned in October to deal with a water problem with the tenant's toilet. This was again treated as an emergency entry as the tenant was not at home. The contractor entered with the male landlord and they replaced the toilet. Due to the condition of the tenant's unit the contractor took pictures to show the female landlord. The landlord referred to their photographic evidence showing the condition of the unit in October, 2014. On this occasion there was no rabbit feces evident on the floor of the unit.

The landlord testified that the tenant was not spoken to about the condition of his unit and warning letters were not given to the tenant prior to serving the tenant with the One Month Notice to End Tenancy for cause (the Notice).

The landlord testified that due to the condition of the tenant's unit in August and October, 2014 the landlords served the tenant with a One Month Notice to End Tenancy on December 31, 2014 in person. The Notice has an effective date of January 31, 2015 and provided the following reasons to end the tenancy:

1) The tenant or a person permitted on the residential property by the tenant has

(iii) Put the landlord's property at significant risk;

2) The tenant has caused extraordinary damage to the unit/site or property

3) The tenant has not done required repairs to the unit, site of property

The landlord testified that due to the tenant allowing his pet rabbits to defecate and urinate on the carpets, these carpets, the flooring and the drywall will need to be replaced as it has caused extraordinary damage to the unit. The landlord testified that the tenant has not done the required repairs in the unit because the tenant has not kept the unit clean and tidy. The landlords seek an Order of Possession effective on February 28, 2015.

The landlords seek a Monetary Order to make repairs to the unit of \$325.00 and seek an Order to keep the security deposit to cover these repairs. The landlords also seek to recover the filing fee of \$50.00 from the tenants.

The tenant disputed the landlords' claims. The tenant testified that there is no urine or feces from his rabbits on the floor or carpet and there is no damage to the drywall as the tenant's furniture covers the walls. The tenant testified that his rabbits are trained to use a litter box and any feces or urine from this could not saturate the walls.

The tenant testified that the landlords' entry by their contractor into the tenant's unit on two occasions was unlawful and unauthorised. The landlords did not mention to the tenant that they needed to enter his unit. The tenant testified that he had been away and when he came home he found the fridge was not working. The landlord was notified

and the fridge and unit were cleaned up when the tenant returned home. The tenant testified that when the landlord served the tenant with a One Month Notice to End Tenancy the unit was in a clean and tidy and hygienic condition with only normal wear and tear for a tenancy of 10 years. The tenant referred to his photographic evidence showing the condition of the unit at the time the Notice was served in December, 2014

The tenant disputed that there was an inch thick layer of rabbit feces on the carpets. The tenant testified that the unit was not newly renovated when the tenant took possession in 2005 and the carpets were old and stained by previous tenants. The tenant testified that he has not caused extraordinary damage to the unit and no repairs are required in the unit.

The landlords call their witness RB who is the contractor who entered the tenant's unit. The witness testified that the landlords had a water leak coming into the basement and needed the witness to check the tenant's unit. The landlord gave the witness a key to the tenant's unit. Upon entry, the witness testified that he found the floor brown with rabbit droppings an inch thick. The smell was so bad the witness had to leave to get a mask. After looking for any signs of water leakage the witness left the unit and informed the landlord. In October the witness returned to the tenant's unit as the landlord said they could hear water running in the unit. The tenant was not at home and the witness entered the unit. The rabbit droppings had been picked up and the unit was in such a bad condition that the witness repaired the toilet and decided to take photographs of the unit. The witness testified that the carpet and drywall will need to be replaced as the moisture level from rabbit urine and feces can affect the entire building and make it uninhabitable.

The witness testified when questioned that he could not see the walls as the tenant's belongings cover them.

The landlord when questioned testified that they live in the unit upstairs and had not smelt odours from the tenant's unit.

Analysis

In this matter, the landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

With this in mind, I have considered the landlords corroborating evidence to show that the tenant has put the landlords' property at significant risk. While I accept that the photographs taken by the landlords' contractor do show the unit to be in a condition that I would consider to be in non-compliance with s. 32 of the *Residential Tenancy Act* (*Act*) the landlords course of action at that time should have been to issue the tenant with a warning letter concerning the condition of the unit prior to issuing the tenant with a One Month Notice to End Tenancy for cause. A warning letter informs the tenant that they are in breach of s. 32(2) of the *Act* which states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The landlord's witness has testified that the carpets were an inch thick with rabbit feces when he was in the unit in August. The tenant has contradicted this testimony. I find landlords must attempt to mitigate any loss or damage to their property and if the floor was an inch thick in rabbit feces and urine then the reasonable course of action of a landlord would be to take immediate steps to remedy this by either serving the tenant with a legal Notice of Entry for an inspection of the unit as soon as they were informed in August, rather than wait until December 31, 2014 to serve the tenant with a One Month Notice to End Tenancy for cause. It is my decision that the landlords have insufficient corroborating evidence to support their claim that the carpets in the unit were covered with rabbit feces and urine which has caused significant or extraordinary damage to the

unit. Without sufficient corroborating evidence it is one person's word against that of the other and therefore the burden of proof is not met.

I am satisfied that the tenant has cleaned the unit and it was in a reasonable clean condition at the time the Notice was served upon the tenant. Consequently, I dismiss the landlords' application for an Order of Possession and uphold the tenant's application to have the Notice set aside.

With regard to the landlords' claim for \$325.00 for damage to the unit, site or property; the landlord has the burden of proof to show that the unit has been damaged with rabbit feces and urine. There is insufficient evidence to meet the burden of proof in this matter and this section of the landlords' claim is dismissed.

With regard to the landlords' claim to keep the security deposit; as this tenancy will continue at this time the landlords' claim to keep the security deposit for damage to the unit, site or property is denied. I refer the landlords to s. 23(4) of the *Act* which requires a landlord to complete a condition inspection report at the start of a tenancy in accordance with the regulations. In failing to complete the condition inspection report when the tenant moved in, I find the landlords contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(c) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

The landlords must therefore continue to hold the security deposit in trust until such a time as the tenancy ends and then the matter can be dealt with under s. 38 of the *Act*.

As the landlords' claim has no merit the landlords must bear the cost of filing their own application.

Conclusion

The tenant's application is upheld. The One Month Notice to End Tenancy for Cause dated December 31, 2014 is cancelled and the tenancy will continue.

The landlords' application for an Order of Possession and a Monetary Order is dismissed without leave to reapply.

The landlords' application to keep the security deposit is dismissed with 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 06, 2015

Residential Tenancy Branch

