



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MUNSON ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on August 27, 2015.

Both parties appeared, gave 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 at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on August 27, 2015, be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant was required to vacate the rental unit on October 1, 2015.

The reason stated in the Notice was that the tenant has:

- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- caused extraordinary damage to the unit.

Counsel for the landlord submits that the tenant has breached a material term of the tenancy agreement, specifically clause 24, care and use of property. Counsel submits

that the tenant has failed to maintain reasonable health, cleanliness and sanitary standards throughout the property.

Counsel for the landlord further submits that since the tenancy commenced in December 2014, the tenant has caused significant damage to the rental unit as the rental unit was in excellent condition when the tenancy started. Filed in evidence a list of work completed by the contractor prior to the tenancy commencing.

The landlord testified that due to the state of the yard they sent someone over to the premises to clean the yard and pick up the garbage. The landlord stated there was an entire truck load of garbage. The grass also had to be cut as it was over a foot in height.

The landlord testified that it was also discovered that the rental unit was in a filthy condition and there were piles of garbage and debris. The landlord stated the tenant is not meeting reasonable health standards.

The landlord testified that the tenant has broken the kitchen faucet, damaged the wood floors, there is a door off the hinges, the toilet is covered in mould and there is a hole in the wall. The landlord stated that the tenant is causing significant damages.

The landlord testified that the tenant has been given numerous verbal warnings to clean the premises and make the necessary repairs.

In support of the landlord are witness statements for KP and DM.

The tenant testified that the hole in the wall happened because the landlord removed the door stopper when they removed part of the carpet and the door accidentally hit the wall. The tenant stated the wood floor was not damaged by them as it was in an area that was underneath the carpet that was removed by the landlord. The tenant stated that the door was off the frame as the hinges that the landlord used were not the proper size.

The support worker for the tenant submits that the house is very cluttered but does not necessarily agree that it is garbage. The support worker stated that they have been assisting the tenant and have been actively working with the tenant on cleaning issues. The support worker submits the statement of KP is exaggerated as they indicated the rental unit is damaged beyond repair and is not supported by the evidence. The support worker submits when they were in the unit and the only damage they saw was the hole in the wall behind the door and the toilet which likely needs to be replaced.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy. A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- caused extraordinary damage to the unit.

In this matter, the landlord alleged a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. However, the landlord has not provided any written notices to the tenant. Further, I am not satisfied that the landlord has provided the tenant with a reasonable time to correct the matter prior to issuing the Notice as the breach of the material term relates to the condition the rental unit was found in, on or about August 21, 2015 and the Notice was issued on August 27, 2015. While I accept people have different standards of cleanliness, no photographs were submitted for my review or consideration.

Further, since the Notice was issued the tenant has engaged with support services to correct the matter.

Based on the above, I find the landlord has failed to prove that the tenant has breached a material term of the tenancy agreement within a reasonable time after written notice to do so.

I am also not satisfied that the tenant has caused extraordinary damage to the unit. No photographs were submitted for my review or consideration. While I accept the tenant has caused damage to the one wall and the toilet and the tenant is required to make the necessary repairs, I do not find that extraordinary damage, sufficient to end the tenancy.

I find the evidence does not support the Notice was issued for the reasons stated due to insufficient evidence. Therefore, I grant the tenant's application to cancel the Notice issued on August 27, 2015.

The tenant is cautioned that they must comply with section 32(2) of the Act, to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The tenant is cautioned that they must comply with section 32(3) of the Act, a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Should the tenant not comply with section 32(2) and 32(3) of the Act, the landlord is at liberty to issue a new notice to end tenancy. A copy of the decision may be submitted as evidence at any future hearing, to prove the tenant has been formally cautioned.

Conclusion

The tenant's' application to cancel the Notice, issued on August 27, 2015, is granted. The tenancy will continue until legally ended in accordance with the Act.

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: November 13, 2015

Residential Tenancy Branch

