Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC; MT, CNC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an Order of Possession for cause, pursuant to section 55.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause, dated October 15, 2015 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlords' 1 Month Notice, pursuant to section 47;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenant and the two landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 92 minutes, in order to allow both parties, particularly the tenant, to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant testified that she was ready to proceed and was not requesting an adjournment of this hearing, despite the fact that she had not submitted photographs or other responsive evidence to the landlords' written evidence package containing coloured photographs. I noted that the tenant's application was first filed on October 29, 2015 and the landlords' application was filed after the tenant's application on November 9, 2015. The tenant had over two months from filing her application to present all her written evidence, including any photographs, prior to this hearing on January 4, 2016. Accordingly, I proceeded with the hearing on the basis of both parties' consent and willingness to proceed, as well as the fact that both parties had notice of the other party's claim and enough time to file evidence before this hearing.

The landlords testified that they served the tenant with the 1 Month Notice on October 15, 2015, by way of registered mail. The landlords provided a Canada Post tracking number printout, indicating that the package was received and signed for by the tenant on October 28, 2015. The tenant testified that she received the 1 Month Notice on October 28, 2015, after receiving multiple notices to retrieve the package. The tenant filed her application to dispute the notice on October 29, 2015 and then amended it on November 4, 2015. Accordingly, I find that the tenant was within the 10 day time limit under section 47(4) of the *Act* to dispute the 1 Month Notice. Therefore, I find that the tenant's application for more time to dispute the 1 Month Notice is not required and is a moot issue.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an order of possession for cause?

Is the tenant entitled to recover the filing fee for her application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

The tenant testified that the tenancy began with the former landlord owner on August 15, 2011. The landlords testified that they purchased the property from the former landlord and became landlords on October 6, 2015. Both parties agreed that a previous hearing was held on October 15, 2015, whereby the tenant disputed a 1 Month Notice issued by the former landlord. The file numbers for the previous hearing appear on the front page of this decision. The former landlord did not appear at the previous hearing but the two current landlords did. The tenant stated that the two current landlords had no standing to attend the previous hearing, claiming that she had no notice that they were her new landlords. The previous hearing Arbitrator agreed and dismissed the former landlord's application and allowed the tenancy to continue. At this current hearing, the tenant agreed that these two current landlords had standing to attend this hearing as landlords, as she named them both as respondents in her application, the landlords purchased her rental unit, and she has paid them rent to live in this rental unit.

Both parties agreed that a written tenancy agreement was signed between the former landlord and this tenant and that no new tenancy agreement was signed with the current two landlords when they assumed ownership of the rental unit. The latest tenancy agreement states that the tenancy began on October 1, 2014 and is for a fixed term to end on September 30, 2016, after which it may continue on a month-to-month basis or another fixed length of time.

The rental unit is a two-level house of approximately 4000 square feet. The tenant explained that her ex-husband and his child were previously residing in the rental unit with her, but they no

longer reside there. The tenant stated that she currently lives in the rental unit with her three children. Monthly rent in the amount of $3,200.00 is payable on the first day of each month. The landlords stated that they have no record from the former landlord that any security or pet damage deposits were paid by the tenant. The tenant claimed that her ex-husband paid a security deposit of $1,150.00 when she was only using the upper portion of the house and paying $2,300.00 per month for rent. The tenant stated that her ex-husband paid a further deposit of $900.00 for the basement suite in December 2012 and a further $1,150.00 was paid as a pet damage deposit when she got a dog in December 2013. The tenant stated that she has no proof of the payments because her ex-husband made the payments.

The tenant stated that she sublets the basement suite to two tenants, pursuant to permission from the former landlord, and she collects rent of $1,200.00 as per her tenancy agreement with them. The tenant confirmed that she sublets another room to another tenant, pursuant to permission from the former landlord, and she collects rent of $750.00 as per her tenancy agreement with this other tenant.

The landlords provided a copy of the 1 Month Notice, with an effective move-out date of November 30, 2015. The landlords cited the following reasons for the issuance of the Notice:

- *Tenant has caused extraordinary damage to the unit/site or property/park;*
- *Tenant has not done required repairs of damage to the unit/site.*

The landlords stated that the tenant caused extraordinary damage to the rental unit, as the house was built in 2009 and listed for $1.5 million dollars and it has decreased dramatically in price over the years, due to the interior damages caused by the tenant. The landlords stated that they purchased the property from the former landlord for $755,000.00 in October 2015. The landlords provided a letter, dated July 25, 2015, from a licensed realtor who worked for the former landlord and listed and sold the property to the current landlords. The letter states that the price of the home decreased significantly due to the damage caused by the tenant, not because of the housing market, and that the tenant and her family were the only people living in the property since it was built. The landlords stated that they bought the property on a quick sale, based on their budget.

The landlords testified that the tenant caused extraordinary damage by heavily staining and tearing the carpets, scratching the hardwood floors, making holes in the walls, unplugging the smoke detector, leaving a candle burning unattended, causing water damage and staining on the walls and drywall by overflowing the bathtub, damaging the walls and a door in the rental unit, causing scratches and chips in the stair railings and kitchen cupboards, breaking the glass on an outside window, and living in an unclean manner with clothes and items left all over the rental unit. The landlords provided coloured photographs, which they obtained from the realtor, of the condition of the house in 2010 when it was listed for sale and before the tenant moved in. The landlords also provided coloured photographs that the male landlord took after damages were caused by the tenant when the landlords went to inspect the unit for repairs on September 11, 2015.

The tenant agreed that the photographs taken before she moved in, were an accurate account of the condition of the rental unit. The tenant initially agreed that she caused the majority of the damages in the photographs, then stated that she did not, and then claimed that her ex-husband and his child caused the damages and she was not responsible for it. The tenant also maintained that the damages were reasonable wear and tear, particularly given that she has three children living with her in the rental unit. The tenant further noted that the former landlord lived in the rental unit with his son, pets and some workers and that they stored their work items there and damaged the property. The landlords stated that there was no record of other people having lived in the rental unit besides the tenant. The tenant stated that the former landlord broke the outside window, caused some scratching on the hardwood floors and caused holes in the walls and roof to wire a home theatre system. She indicated that some of these damages were noted in the move-in condition inspection report, a report which the landlords say the tenant fabricated and altered. The tenant maintained that the water damage was caused by caulking and that the door damage was caused by her ex-husband and the fact that the foundation of the property was unstable and shifting. The tenant stated that she removed the smoke detector because it was not working with batteries and the landlord failed to fix it, but she has other plug-in smoke detectors in the rental unit. The tenant noted that the tear in the carpet was from the former landlord's pets.

The landlords further stated that the tenant agreed to a list of damages at the rental unit as of September 10, 2014 and that she failed to fix these damages. The landlords stated that they had not given the tenant a timeline to repair damages, but that the tenant failed to abide by her agreement with the former landlord. The tenant claimed that she did not agree to repair any damages, she only agreed about the list of damages that she says were caused by her ex-husband. The landlords claimed that the tenant agreed to repair the damages when she signed the addendum to the tenancy agreement, claiming that she was responsible for the damages. The tenant explained that the addendum only made her responsible for damages caused through subletting the unit to other tenants and the landlords were not claiming for damage to the basement unit. The landlords claimed that the tenant only fixed the toilet seat, not any other damages caused by her, including the scratches to the hardwood floors, the cabinet doors, the carpet stains, two other doors, or the hand shower. The tenant agreed that she fixed the toilet seat because she needed to use it immediately, but that she was not responsible for fixing the other damages.

Analysis

I accept the landlords' testimony at this hearing and I found them both to be credible witnesses. I found the tenant to be a less credible witness because she changed her testimony a number of times in order to support her varying claims.

On a balance of probabilities and for the reasons stated below, I find that the tenant caused the damages as reflected in the coloured photographs submitted by the landlords. Whether this

damage was inflicted by the tenant's ex-husband or his child, both the tenant and her ex-husband were named on the tenancy agreement as tenants and they are jointly and severally liable for any damages caused to the rental unit. I find that the damages considered in their totality, rather than individually, constitute extraordinary damage to the rental unit. I find that the tenant caused extraordinary damage by the stains and tears to the carpets, the significant scratches and gouges in the hardwood floors, the holes and other damages to the walls and drywall, the damage to the door, and the scratches and chips to the stair railings and the kitchen cupboards. Compared to the photographs taken in 2010 before the tenant moved in, which the tenant agreed were accurate accounts, I find that the photographs taken in September 2015 reflect significant and extraordinary damage caused by the tenant.
Even if I find that the former landlord lived in the rental unit prior to the tenant, which the tenant provided no proof thereof, I find that any potential damages that may have been caused by the former landlord were reasonable wear and tear and were minor as no major damages were noted on the tenant's copy of the move-in condition inspection report, which the landlord disputes. The tenant agreed that she caused the majority of damages to the hardwood flooring, carpets, walls, door, and kitchen cupboards, and these are the areas that I have found constituted significant and extraordinary damage.

I attach no weight to the letter from the former landlords' realtor, as she did not testify at this hearing to authenticate the letter and its contents. Further, I find that the landlords failed to provide sufficient proof that the realtor is qualified as an expert to provide an opinion regarding the fact that the listing price for this rental unit decreased only due to the damages caused by the tenant rather than the real estate market.

On a balance of probabilities and for the reasons stated above, I find that the landlords issued the 1 Month Notice for a valid reason regarding extraordinary damage. Therefore, it is not necessary for me to explore the other reason indicated on the notice, regarding a failure to complete required repairs of damage.

Accordingly, I find that the landlords are entitled to an order of possession for cause, based on their 1 Month Notice. I find that the landlords are entitled to an **Order of Possession effective at 1:00 p.m. on February 15, 2016**. **The order of possession is effective against the tenant, her three children and all other occupants in the rental unit, including the three sublease tenants.** I find that because the tenant has three children and the fact that three other tenants live in the rental unit under sublease agreements, these parties will require additional time to receive notice and secure alternative housing.

I dismiss the tenant's application to cancel the landlords' 1 Month Notice without leave to reapply. As the tenant was unsuccessful in her application, she is not entitled to recover her $50.00 filing fee and she must bear this cost.

Conclusion

I grant an Order of Possession to the landlords effective **at 1:00 p.m. on February 15, 2016**. Should the **tenant or any other occupants** on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application for more time to dispute the 1 Month Notice is not required and is a moot issue.

The remainder of the tenant's application is dismissed without leave to reapply. The tenant must bear the cost of the $50.00 filing fee for her 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: January 07, 2016

Residential Tenancy Branch