



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard. No issues regarding the exchange of evidence were identified by the parties.

Issue(s) to be Decided

Do the landlords have cause, within the meaning of the Residential Tenancy Act, for ending this tenancy?

Background and Evidence

This tenancy commenced July 1, 2006, as a one-year fixed term tenancy. It has been renewed every year by successive one year fixed term agreements. At the present time the monthly rent, which is due on the first day of the month, is \$1169.00.

The landlords bought this property in 2008.

The rental unit is a two story, three bedroom duplex. The tenant lives there with her two school age children. The back yard is separated and fenced but the front yard is open. The driveway is shared by both tenants. There are no garages or storage sheds on this property.

It is common ground that the tenant, who is an experienced painter but does not have a Gold Seal certification, has painted the rental unit twice. She has also done painting work for the landlords in their own home and in other rental units that they own.

The tenant uses wood pallets as the canvass for her art projects. They were delivered in the summer of 2014 and are stacked in the front yard. The landlord testified that the pile seems to be growing; the tenant testified that she only ever had the one delivery.

The evidence is that nothing was said about the pallets until October 11, 2015. The tenant e-mails the landlord asking that the gutters be cleaned. The landlord responded: "Kindly remove all the debris in the front and back yard and we'd be happy to clean the gutters." The tenant responded that she was accumulating debris in a pile until she had a truckload together and the pallets did not interfere with gutter cleaning. The landlord answered: "The yard is unacceptable and I want the front and back yard cleaned immediately."

A few days later the landlords were at the adjoining duplex and noticed a roll of carpet in the yard. After giving notice the landlords inspected the rental unit on October 21. They were very upset to discover that the tenant had removed the carpet and underlay from the dining area. The next day they served the tenant with a 1 Month Notice to End Tenancy. The notice set out the following reasons:

- 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 tenant filed this application for dispute resolution on November 2, 2015, within the required ten days.

In December the landlords conducted a second inspection and discovered that the tenant had painted the concrete slab that was beneath the carpet with latex paint the same colour as the old carpet.

It is common ground that the tenant did not ask permission before cutting out the carpet and painting the concrete sub-floor.

The tenant's position is that:

- The carpet was stained when she moved in as shown on the Move-In Condition Report filed in evidence.
- In the past whenever she spoke to the landlord about making changes to the unit at her expense, he would say that he did not care what she did as long as she did it properly.
- She had installed new flooring in the kitchen with the landlord's prior consent.
- She had painted the unit twice with the landlord's prior consent.
- The landlord recently replaced the carpet in the adjoining unit with laminate.
- She had talked to the landlord about replacing the carpet with laminate at some point in the future at her own expense. By scraping away the glue she has saved the landlords a big part of the labour that will be required when they eventually replace the flooring.

- There are bonding agents that could be used on latex paint.

The landlords' position is that:

- Any changes made in the past were made with their prior consent.
- This is their property and the tenant had no right to remove the carpet without their permission.
- While they trusted the tenant's ability as a painter she does not have the training or the experience to properly remove and install flooring.
- The male landlord is a Gold Seal carpenter and has the experience to properly remove and install flooring.
- Because of the way the tenant cut the carpet the living room carpet will have to be replaced as well as the dining room carpet.
- The latex paint will have to be scraped thereby adding to the work and cost of repairing the flooring.
- When this tenancy ends they do not have the money to replace the carpet in this unit.

With regard to the front yard the male landlord testified that on three previous occasions he has hauled refuse for the tenant at their expense and they are tired of the yard looking like this. The male landlord works with the next door neighbour who has been complaining to him about the state of the yard.

The tenant testified that throughout the course of this tenancy, regardless of who lived in the adjoining unit, she has done all of the maintenance of the front yard. She agreed that the landlord has hauled refuse for her but always when he was going to the dump anyway.

The landlords testified that the back yard is in acceptable condition. The only other damage noted by the landlords is some damage to the bathroom vanity and a spot on the exterior front wall where one of the tenant's children threw an egg at the house. The tenant testified that she already told the landlord that she would repair the mark when the weather warmed up and in his e-mail he agreed to that. She also testified that she is making arrangements to have the vanity repaired.

The tenant paid the December and January rents. No receipts were given for the payments.

Analysis

As explained on the Residential Tenancy Branch web site, where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment

for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant in writing that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy.”

This is usually accomplished by the landlord giving the tenant a receipt that states the rent payment is being “accepted for use and occupancy only”.

In this case the effective date of the notice to end tenancy was November 30, 2015. By accepting the December and January rents without making it clear that the rents were being accepted “for use and occupancy only” the landlords have reinstated the tenancy. Accordingly, the 1 Month Notice to End Tenancy for Cause dated October 22, 2015 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

From the testimony and the parties’ demeanour in the hearing it is apparent that this landlord tenant relationship has become very contentious. To help the landlords manage their business and the parties manage their relationship the parties are directed to the following information, all of which is available on the Residential Tenancy Branch website:

- *Residential Tenancy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* among other things makes it clear that tenants should not make changes to the rental unit without the landlord’s prior consent. It also sets out the consequences for the parties if the tenant does make unauthorized changes and does not return the premises to their original condition at the end of the tenancy.
- *Residential Tenancy Guideline 16: Claims in Damages* advises that if a claim is made by the landlord for damage to property the normal measure of damage is the cost of repairs, with some allowance for loss of rent or occupation during repair, or replacement, (less depreciation), whichever is less.
- *Residential Tenancy Guideline 40: Useful Life of Building Elements* sets out the depreciation schedule that arbitrators apply to all claims for damages.

Conclusion

For the reasons set out above the 1 Month Notice to End Tenancy for Cause dated October 22, 2015 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

As the tenant was successful on this application she is entitled to reimbursement from the landlords of the \$50.00 fee she paid to file it. Pursuant to section 72 this amount may be deducted from the next rent payment due to the landlord.

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 08, 2016

Residential Tenancy Branch

