



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, LRE, MNDC, O, OLC, PSF, RP

Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause ("1 Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application, pursuant to section 72;
- order the landlord to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- order the landlord to comply with the Act, regulations or tenancy agreement, pursuant to section 62;
- order the landlord to provide services or facilities required by law pursuant to section 62; and
- an order for the landlord to make repairs to the unit, site or property, pursuant to section 33.
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Tenant MS (the "tenant"), tenant NS, along with the landlord and the landlord's two agents, landlord TC (the "landlord") and "landlord GN" attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenants' application, evidence and hearing notice.

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an Application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would

end pursuant to the landlord's 1 Month Notice and if there was enough time to hear the tenant's remaining claims, I would hear them. At the end of the hearing, I advised both parties that there was not enough time to hear the tenant's remaining claims, as 60 minutes had already expired in the hearing. I have addressed the remainder of the tenant's claims in the analysis and conclusion sections of this decision, below.

Issue(s) to be Decided

Are the tenants entitled to have the landlord's 1 Month Notice to End Tenancy for Cause dismissed? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The parties testified that the landlord assumed this tenancy in December 2015, when the landlord purchased the property from the previous landlord. The landlord did not receive a tenancy agreement from the previous owner and did not enter into a new tenancy agreement with the tenants in December 2015. The parties agreed the tenancy started April 1, 2014 and rent in the amount of \$1,050.00 is payable on the first of each month. A security deposit of \$500.00 was remitted by the tenants at the start of their tenancy. The landlord assumed this deposit from the former landlord. The tenants continue to reside in the rental unit.

The tenants provided conflicting testimony on the term of the tenancy. The issue of length of tenancy was addressed in a previous Decision issued by the Branch on February 18, 2016. The Arbitrator in this hearing determined that the tenancy agreement submitted by the tenants, that reflected a fixed term tenancy until April 1, 2017, was the tenancy agreement. For ease of reference, the file number for this hearing is set out on the front page of this decision.

Landlord

The landlord testified that the previous Arbitrator was misled. The tenancy was for a fixed term, from April 1, 2014 until April 1, 2015 and was to continue on a month to month basis. The landlord submitted that the tenants fraudulently adjusted the length of tenancy on the tenancy agreement they remitted to the landlord and the previous Arbitrator. The landlord has submitted two tenancy agreements and a signed letter from the previous landlord.

Both tenancy agreements are dated April 1, 2014 and show a fixed term tenancy for three years ending on April 1, 2017. Both agreements show corrections to the length of

time, day and year the tenancy was to end. The first tenancy agreement does not have initials authorizing the corrected year whereas the second tenancy agreement does. The second tenancy agreement has the date September 5, 2015 written on the top of each page. The landlord contended that this difference in the two agreements demonstrates that the tenants maintain the original copy that reflect a one year fixed term and have amended these versions to show a three year fixed term. The signed letter from the previous landlord indicates that he was in Houston BC on September 5, 2015 and "did not sign any lease."

The tenant confirmed personal receipt of the landlord's 1 Month Notice on April 27, 2016 with an effective date of June 1, 2016. The 1 Month Notice was issued for 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*
- *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park*

Shortly after purchasing the property, the landlord became aware of a water leak in the ceiling downstairs rental unit and hired a contractor to inspect and repair the issue. Upon inspection of the upstairs rental unit, the landlord and contractor observed dried up caulking around the main bathroom tub. Upon further inspection the landlord and contractor discovered the subfloor in the main bathroom was in a completely rotted state. The landlord and contractor also found evidence of mold in a walk in closet, the hot water tank in a state of disrepair and a leaking hot water heating system. The landlord provided a signed letter from the contractor stating that:

"...the tenants have neglected to repair any damages in problem areas i.e., both bathrooms and hot water tank/furnace room. The damaged areas had been impaired for a sufficient amount of time, at least 1 year, and there appears to have been no repair attempt prior to this i.e, original caulking around bathroom tub and shower bases."

It is the landlord's position that by neglect of repairs the tenants indirectly caused extraordinary damage to both their own rental unit and the downstairs unit.

The landlord testified that the tenants knowingly gave false information about the length of the tenancy and state of damages to the rental unit to the landlord.

Tenants

The tenants testified that the realtor knew the tenancy was a fixed 3 year term. Further the tenant stated he told potential purchasers about the 3 year fixed term. The tenant testified he had no reason to tamper with the tenancy agreement, the agreement clearly states the dates and landlords signature. The tenant questioned the existence of two tenancy agreements, he stated there was only one agreement and the owner had the original. Tenant NS testified that at the start of the tenancy she met with the previous landlord's brother in law and signed the tenancy agreement in his presence. It was the brother in law that initialed the corrected year. The brother-in-law took the tenancy agreement to the original owner.

Tenant NS testified that nothing was leaking from upstairs to downstairs. She acknowledged they had never caulked the tub during their tenancy because she didn't realize there was a problem with it. She did not notice any mold or smell mold until the floors were removed. She acknowledged that there was an issue with the heating system in November of 2015; however they paid for the repair and were reimbursed by the previous landlord. Tenant NS testified that at one time they reported a water problem outside the rental unit to the previous landlord however; nothing was done to rectify it. Tenant NS stated it was the responsibility of the landlord to conduct a house inspection upon purchasing the property.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the rental unit or residential property, the tenant does not repair damage to the rental unit or other residential property, as required under section 32, or the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the property.

Cause Damage

Section 32 of the *Act* establishes that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Although the landlord has provided a witness statement from the contractor stating it was the tenants' neglect that created the damage, I find no evidence of what that neglect may have been other than perhaps not caulking the bathtub. Furthermore, the tenants are not required to repair a hot water heater unless they damaged it themselves. There was no evidence of this before me. I find it more probable that the state of the rotten bathroom floor, heating system and hot water tank was a result of years of neglect on the previous landlord's part. The tenancy only began in April of 2014. I find the previous landlord failed to provide and maintain the rental unit in a decent state of repair throughout the tenancy pursuant to section 32 of the *Act*. Based on this and in the absence of conclusive evidence that the tenants caused extraordinary damage to the rental unit, I find this is not a sufficient reason to end the tenancy.

Repair Damage

Under section 32 of the *Act*, a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant. As I have already determined that the damage was not a result of neglect on the tenants' part, I find the tenants are not responsible for repairing that damage. Accordingly, I find this is an inadequate reason to end the tenancy.

False Information

The landlord contended that the tenants knowingly gave false information about the length of tenancy to the landlord as a prospective purchaser. Regardless of the truthfulness, this information was given to the landlord as a prospective purchaser who later became the landlord. There is no evidence that the tenant has knowingly given false information about the residential property to a purchaser since the landlord's purchase of the property, therefore I find the landlord does not meet this ground to end the tenancy. The landlord further argued that the tenant knowingly gave false information about the state of damages to the rental unit. The landlord did not substantiate their position that the tenants knowingly misled them about the damages. The tenants testified they did not know about the damages and the landlord did not prove otherwise. Consequently I find the landlord is not entitled to end the tenancy on this ground.

As the tenant was successful in this Application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the Application.

Conclusion

The tenants' application to cancel the 2 Month Notice is upheld.

The tenants' application to recover the filing fee is upheld. I order the tenants to deduct \$100.00 from future rent payable to the landlord at the rental unit, in full satisfaction of the monetary award provided to the tenants at this hearing.

The tenants' application to order the landlord to suspend or set conditions on the landlord's right to enter the rental unit is dismissed with leave to reapply.

The tenants' application for a monetary order for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

The tenants' application to order the landlord to comply with the *Act*, regulations or tenancy agreement is dismissed with leave to reapply.

The tenants' application to order the order the landlord to provide services or facilities required by law is dismissed with leave to reapply.

The tenants' application to order the landlord to make repairs to the unit, site or property 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: June 13, 2016

Residential Tenancy Branch