



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ashurwin Holdings Ltd. and RPM Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

Issue(s) to be Decided

Does the landlord have cause to end this tenancy?

Background and Evidence

The tenants have rented from the landlord since October 1, 2006. At first they rented a unit in another building. The radiator in the unit above the tenants leaked and caused damage to their unit. To accommodate the tenants the landlord moved them to this unit on April 1, 2012. As of the date of the hearing the monthly rent, which is due on the first day of the month, is \$1029.00. Both parties gave evidence that indicated that the rent is below current market value.

The property manager testified that the landlords bought this building in 2010 or 2011. It is a 1960 era, three story wood frame building. After buying the building the owners refurbished it with new laminate flooring, new textured ceilings, new fixtures and new appliances. The witness said several times that the finishes in all three units are identical.

The rental unit is a one bedroom/one bathroom apartment on the third floor. It is approximately 700 square feet. The landlord's witness said the two units below are identical.

About 1 ½ years ago there was a flood in the rental unit. Neither of the landlord's witnesses were able to provide any information about that event. The tenants' evidence is that there was a small overflow from the bathtub, which had been left running. There was no damage to their unit. The next day the building staff told them that water had leaked into the unit below. They never heard from the landlord again.

On August 11, 2016 the female tenant came home from work sometime after midnight. She started running a bath, lay down on the couch, and fell asleep. When she woke up water was pouring over the tub. She immediately turned off the taps and started mopping up. The male tenant works nights. When he came home the female tenant was still mopping up water.

A significant amount of water flowed into the two units below. Those tenants contacted the landlords' emergency number. The landlords' staff attended at the building and cleanup the water. The property manager said the staff used shop vacs, mops and towels to clean up the water. A remediation company was not brought in.

The property manager testified that the staff determined that the water was not from a water line leak but from the tenants' unit. The flow of water stopped. No one spoke to the tenants or, it appears, attempted to speak to them that night.

The property manager went to the building the next morning. He said he went to the tenants' unit and spoke to the female tenant. He said he could see where the water flowed from the bathroom, across the hallway and into the kitchen. From the kitchen it flowed into the second and first floor units directly below.

The tenants say that the next morning the female tenant went to the unit below to see the extent of the damage. It was there that she encountered the property manager and had a conversation with him. They testified that the property manager did not come to their unit until a week or so later, after they had served a notice to inspect.

The property manager testified that the photographs he submitted in evidence were taken on August 11 and they were taken in all the units. The photographs are not labelled. Of the ten photographs submitted, eight are of the ceiling so are clearly not of the tenants' unit. The other two are close-ups of laminate flooring.

The day after viewing the damage the landlord issued and posted a 1 Month Notice to End Tenancy for Cause. The reason stated on the notice was that "Tenant has caused extraordinary damage to the unit/site or property/park."

The tenants responded to the notice by sending the landlords a letter in which they asked for details of the water damage and the cost incurred by the landlord as a result of the flood. There is no evidence of any response by the landlord to the letter.

In the landlords' evidence package was an invoice dated August 16, 2016 for charges related to the damage in all three units. The landlord's witnesses said the invoice had been submitted to the tenants but could not give any information as to how or when. The tenants say the first time they saw the invoice was when they received the landlords' evidence package on October 7.

As the landlords' witnesses testified it became clear that the document was not an invoice but an estimate. Most of the work set out on the estimate has not been done and some never will be.

One of the biggest expenses claimed is for replacement of 1500 square feet of laminate floor at a cost of \$4300.00. The property manager testified that the bottom unit has tile flooring, not laminate, and there are no plans to replace it.

In course of the hearing it came out that work had just started in the unit directly below the tenants. The previous occupants had been evicted pursuant to a 10 Day Notice to End Tenancy for Non-Payment of Rent. Both parties testified that those tenants had dogs, who had caused damaged to the laminate floors in that unit, although the parties gave different descriptions of the extent of the damage caused by the dogs. It appears that the estimate was for the replacement of all the laminate flooring in this unit.

The estimate sets out claims for retexturing and repainting the ceilings of the two units below. The landlord testified that a few weeks after the incident the tenant in the lowest unit started to complain of mildew and threatened to go to the city. The landlord's staff used a chemical mildew treatment and repainted the affected areas. No specifics, other than the estimate, were provided about this work. The landlord also said there were some drywall repairs in this unit. This was not mentioned on the estimate nor was any details about this expense submitted.

The only repair related to the tenants' unit on the estimate is replacement of the bathroom line, 36 square feet. This repair has not been done yet.

At one point the property manager stated that they need this unit to be vacant in order to do the restoration. He did acknowledge that if that was the case, a different eviction procedure applies.

The final item on the estimate was an emergency staff call out fee of \$900.00 for three people for three hours. This works out to \$100.00/hour for each person.

Analysis

The onus of proof is on the landlords to establish the reason set out on the notice to end tenancy on a balance of probabilities, namely, that the tenants have caused extraordinary damage to the unit or the rental property.

The landlords' oral testimony was inconsistent on some aspects – i.e. replace of the flooring in the bottom unit – and the estimate of damages is so general and/or inaccurate as to be useless. Although the callout fee appears to be inflated it is interesting that only three hours was claimed. That is not a long time in which to completely clean up a flood in two units. It is also significant that the flooding was not extensive enough to require the use of dehumidifiers or fans, or the services of a professional remediation company.

The landlords have only established that the tenants have cause some damage to their unit and the two units below but they have not established that the tenants have caused extraordinary damage. As a result the tenants' application is granted. The 1 Month Notice to End Tenancy for Cause dated August 12, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

As the tenants were successful on their application they are entitled to reimbursement from the landlords of the \$100.00 fee they paid to file it. Pursuant to section 72(2) that amount may be deducted from the next rent payment due to the landlord.

Conclusion

For the reasons set out above the tenants' application is granted.

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 10, 2016

Residential Tenancy Branch