



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a One Month Notice to End Tenancy for cause (the Notice), for an Order for the landlord to make emergency repairs for health or safety reasons; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenants provided minimal documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Of the tenants three pages of documentary evidence only one page was served upon the landlord. Consequently, the other two pages containing two photographs have not been considered pursuant to rule 3.15 of the Rules of Procedure. The landlord provided a copy of the Notice by fax during the hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Are the tenants entitled to an Order to cancel the Notice to End Tenancy?
- Are the tenants entitled to an Order for the landlord to make emergency repairs for health or safety reasons?

Background and Evidence

The parties agreed that this tenancy started on April 01, 2015 for one year. A new tenancy agreement was entered into on April 01, 2016. This agreement is for another one year term and both parties agreed that at the end of the term the tenant must vacate the rental unit. Rent for this unit is \$1000.00 due on the 1st of each month.

The landlord's agent testified that the tenants were served the Notice by registered mail on September 27, 2016. The Notice has an effective date of October 31, 2016. The Notice provides one reason to end the tenancy; that the tenants have caused extraordinary damage to the rental unit. A copy of the Notice has been provided in documentary evidence.

The landlord's agent testified that at the time the tenants moved into the unit the carpet was already six years old. 21 months later the tenants started to complain that there were fleas or eggs in the carpet. The landlord had the carpet sprayed and cleaned and there is no visible damage to the carpet. The tenants are claiming they do not have a pet that could have caused these fleas. The carpet cleaner could not find any fleas that would affect the tenants' health. The tenants want the landlord to change the carpet for laminate flooring.

The landlord called the RTB and was advised that he does not have to change the carpet and was sent information on the useful life of a carpet being 10 years. The landlord's agent testified that the tenants were not disposing of their garbage and the landlord suffered a fine from Strata of \$50.00. The landlord's agent agreed that they do not have any evidence showing that the tenants have caused any extraordinary damage to the rental unit or the carpet in the unit.

The tenant testified that they have not caused any damage in the unit. At the start of the tenancy the landlord did ask the tenants to pay a pet deposit but the tenants did not have any pets and have never had any pets during their tenancy. The tenants do not

know how the fleas and eggs got into their carpet but they asked the landlord to deal with it. The landlord came and sprayed the carpet but has not sent in anyone to clean the carpet.

The tenants seek to have the Notice cancelled and seek an Order for the landlord to make emergency repairs to the carpet to protect the tenants' health. The tenants also seek to recover their filing fee of \$100.00 from the landlord.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering this One Month Notice to End Tenancy for Cause the landlord has the burden to provide sufficient evidence to establish the reason for issuing the Notice. After consideration of the above, I find there was insufficient evidence to prove the reason listed on the Notice issued September 27, 2016. The landlord has not established that the tenants have caused extraordinary damage to the rental unit. Accordingly, I uphold the tenants' application and the One Month Notice is hereby cancelled and is of no force or effect.

With regard to the tenants' application for the landlord to make emergency repairs; the tenants testified that the carpet has fleas and eggs and disputed that the landlord had the carpet cleaned. I direct the parties to the Residential Tenancy Policy Guidelines #1 which provides guideline on the landlords and tenants responsibilities during the tenancy. Part of this guideline deals with the parties responsibilities concerning the carpets in the unit and states:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The tenants have provided insufficient evidence to show that these fleas or eggs were present at the start of the tenancy or even the condition of the carpet at that time. If the tenants only noticed these fleas or eggs 21 months into the tenancy it is likely they have come from some other source for which the landlord has no control. I therefore recommend that the tenants have the carpets cleaned as specified above as part of their responsibility. The tenants' application for an Order for emergency repairs is therefore dismissed.

As the tenants' application has some merit the tenants are entitled to recover their filing fee of **\$100.00** and may deduct that amount from their next rent payment when it is due and payable.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated September 27, 2016 is cancelled and the tenancy will continue.

The tenants' application for emergency repairs is dismissed without 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: November 25, 2016

Residential Tenancy Branch