



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC, RP, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenant applied for an order to cancel the notice to end tenancy, for a monetary order for compensation and for an order directing the landlord to carry out repairs. Both parties applied for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied to cancel the notice to end tenancy, for a monetary order for compensation and for an order directing the landlord to make repairs. As a claim for compensation is unrelated to the main section which is to cancel the one month notice and for an order to make repairs, I dismiss the section of the tenant's claim regarding a claim for compensation, with leave to reapply. Accordingly this hearing only dealt with the tenant's application to set aside the notice to end tenancy and for an order directing the landlord to make repairs.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord negligent with regard to maintenance of the rental unit?

Background and Evidence

The tenancy at this unit started on May 15, 2013. The monthly rent is \$700.00 due on the first of each month. The rental unit is located in the basement of the landlord's home. The basement also houses a second suite that is rented out to a family with an infant. The landlord lives upstairs.

On October 04, 2016, the landlord served the tenant with a notice to end tenancy for cause. The reasons for the notice were that the tenant is repeatedly late paying rent, has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and has caused extraordinary damage to the rental unit. The tenant made application to dispute the notice to end tenancy, in a timely manner.

The landlord stated that the tenant is repeatedly late paying rent and since April 2016, the tenant paid rent in installments and never paid the full amount of rent on the first of the month. The landlord filed a copy of one rent receipt into evidence which is dated November 02, 2016.

The tenant denied repeatedly paying rent late. He stated that the landlord picks up the rent cheque from his suite on the first of each month and sometimes she picks it up on the second. The tenant was firm in his testimony that apart from a couple of months he was always on time paying rent.

The landlord stated that the tenant smokes inside the rental unit causing problems for the landlord and for the family living in the other basement suite. The tenant stated that since the start of tenancy, more than three years ago, he has been smoking inside the rental unit and the landlord did not object. The tenant pointed out that the tenancy agreement does not prohibit smoking inside or outside the rental unit.

The landlord stated that when she advertised the availability of the rental unit, the advertisement clearly stated "*no smoking and no pets*". She also stated that at the time the parties entered into the tenancy agreement, the tenant did not inform her that he smoked and she did not see any signs of him being a smoker.

In her written submission, the landlord agreed that she allowed the tenant to smoke inside the unit rather than outside because when he smoked outside, the smoke came in through open windows and bothered the landlord's elderly parents. The landlord agreed that she did not provide the tenant with a warning letter informing him that smoking was not permitted inside the rental unit. The landlord added that the family in the other basement suite had an infant child who was affected by the smoke. The tenant stated that the occupants of the other suite prior to this family also smoked inside the rental unit and the landlord did not object to this practice.

The landlord stated that in addition to smoking, the tenant now has pets. The tenant replied that approximately two years ago, he verbally informed the landlord that he had acquired pet guinea pigs and she did not object or ask him to remove them.

The tenant agreed that he had altered a closet by removing the door and installing ramps for the rodents to run on. The tenant testified that the landlord had seen the alterations and the guinea pigs earlier and had not complained.

The tenant also agreed that he was responsible for punching a hole in the drywall and had repaired the damage. The landlord stated that the repair was substandard. The parties discussed the issue of laundry. The tenant stated that from the start of the tenancy, the landlord agreed to allow him to use her laundry machines at appointed dates and times. The landlord subsequently took away this service and stated that it was not provided for in the tenancy agreement.

The tenant agreed that the tenancy agreement did not include laundry and when the landlord denied him the use of her laundry machines, the tenant installed his own machines. He removed them when the landlord requested him to do so.

The tenant testified that he provided the landlord with a list of repairs to be done in the rental unit. As of the date of the hearing, the tenant agreed that most repairs were done but some were still outstanding. He stated that the cabinets, trim around tiles and floor trim were installed crooked and were not aesthetically pleasing. He also added that the vinyl flooring in the kitchen was ripped from the start of tenancy and that the kitchen faucet sprayed water when in use. The tenant has applied for an order directing the landlord to make the above mentioned repairs.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the the tenant is repeatedly late paying rent, has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and has caused extraordinary damage to the rental unit.

Based on all the evidence before me and the sworn testimony of the landlord, her agent and the tenant, I find that the landlord has not proven that the tenant is repeatedly late paying rent. Apart from one rent receipt dated November 02, 2016, the landlord did not file documents to support her testimony that the tenant is repeatedly late paying rent. The landlord stated in her written submission that the tenant has been late paying rent from April to November of this year and pays rent in "*small bits of money here and there*" The tenant denied the allegation and stated that he paid rent on time and was late only a couple of times.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The parties provided contradictory testimony regarding whether the rent was paid on time or not. In the absence of additional documents to show that the tenant paid rent late on at least three occasions, I find that the landlord has not proven late payment of rent as a cause to end the tenancy.

Based on the written submission of the landlord, I find that the landlord permitted the tenant to smoke inside the rental unit. Even though the advertisement of the rental unit clearly stated "*no smoking and no pets*", I find that the landlord requested the tenant to smoke inside the unit after she found that smoke was entering her living space when the tenant smoked outside the rental unit. I further find that the landlord was aware that the tenant had pets but has raised objection two years later.

The tenant's main evidence is that the landlord has been aware of the alleged breaches of smoking and having pets and has not raised objection or provided the tenant with notice to stop smoking inside the rental unit and to remove the pets from the rental unit. The landlord's written submission regarding smoking inside the rental unit gives credence to the tenant's testimony that the landlord requested him to smoke inside the unit instead of outside. In addition, I accept the tenant's testimony that the landlord was aware of his pet guinea pigs and until recently, did nothing to let the tenant know that the pets should be removed from the rental unit.

Based on the above, I find that the landlord has not proven that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. However as a courtesy to the occupants of the other basement suite which includes an infant, I recommend to the tenant to be mindful of the infant's well-being and to take steps to smoke in an area that does not impact this family.

The tenant agreed that he had punched a hole in the wall and had altered the closet. The landlord is at liberty to make application for the cost of repairs at the end of tenancy if the tenant has not repaired the hole in the wall or has not restored the closet to its original condition. Even though the tenant admitted to having damaged the rental unit, I find that the damage is not significant enough to end the tenancy.

Regarding the repairs that the tenant is requesting, I find that some items on the list are for cosmetic reasons and do not interfere with the tenant's use of the item. The only item that I will order the landlord to repair is the faucet that sprays when in use.

Based on the above I find that the landlord has not proven the reasons for the notice to end tenancy and therefore I allow the tenant's application and set aside the landlord's notice to end tenancy dated October 04, 2016. As a result, the tenancy shall continue.

The tenant would be wise to refrain from giving the landlord and the other occupants of the building, reason to complain about second hand smoke. The tenant would also be wise to smoke in areas that do not impact the landlord or the other occupants of the basement.

Since the landlord has not proven her case, she must bear the cost of filing her application. The notice is set aside and therefore the tenant is entitled to the recovery of the filing fee. The tenant may make a onetime deduction of \$100.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenant's application for compensation is dismissed with leave to reapply.

The tenant may make a onetime deduction of \$100.00 from a future rent.

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