



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy for this strata unit began on May 16, 2015 with a monthly rent of \$1600.00 payable on the 1st day of each month. The tenant paid a security deposit of \$800.00 and a key fob deposit of \$150.00 at the start of the tenancy. The original agreement was for a 1 year fixed term lease which was renewed for an additional 1 year term ending on June 30, 2017.

The landlord served the tenant with the 1 Month Notice by registered mail on October 19, 2016 on the grounds that the tenant caused extraordinary damage to the unit, has

not done required repairs of the damage and breached a material term of the tenancy agreement.

The landlord's agent submit that on September 14, 2016, the strata council sent a letter to the owner of the rental unit advising that they were being held responsible for an invoice for cleaning stains from the common area hallway leading to the tenant's rental unit. The landlord provided a copy of the letter from the strata as well as a copy of the invoice and proof of payment of the invoice to the strata by the landlord.

The landlord's agent testified that the invoice was charged to two units on the floor which had a trail of stains leading to their units. The invoice was split between the two units. The landlord provided a photo of the stained carpet in the area leading up to the rental unit.

The landlord's agent submits that the strata council does regular scheduled maintenance on this common area but had to perform an extra unscheduled cleaning due to the severity of the stains. The landlord's agent testified they have made several attempts to have the tenant agree to the charges to no avail and had no choice but to issue a Notice to End Tenancy.

The landlord submits the tenants breached a material term of the tenancy agreement as they have not rectified the issue by refusing to reimburse the landlord for the invoice. The landlord submits the tenant signed a form "K" at the start of the tenancy by which they are responsible for any fines levied by the strata council as a result of the tenant's actions. The landlord submits that clause #4(a) and 4(b) of the tenancy agreement stipulate that all strata bylaws form part of the contract and the requirement for the tenant to sign form "K".

The tenants argue that the stain to the carpet is in the common area and they don't agree that they should be responsible to pay for the damage. The tenants argue that the carpets are not any dirtier than other carpets on the same floor and that the carpet was stained when they first moved in. The tenants argue that they are not the only two people who walk on this common carpeted area.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an

application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

It was in dispute whether or not the tenants caused the damage to the carpet in the common area and whether the tenants could be held liable for this damage. Irrespective of whether the tenants caused this damage and could be held liable for such, I find the landlord's 1 Month Notice must be set aside for the following reasons:

First, the Notice is dismissed on the grounds that the tenant caused extraordinary damage to the rental unit as I find the alleged damage is not extraordinary. The damage was repaired by the strata with a cleaning cost of under \$200.00 billed to the landlord. This is not extraordinary damage which would constitute grounds to end the tenancy.

Second, the Notice is dismissed on the grounds that the tenant has not performed required repairs as the strata performed the required cleaning.

Third, the Notice is dismissed on the grounds that the tenant breached a material term of the tenancy as the landlord failed to inform the tenants in writing of each of the following as per Residential Tenancy Policy Guideline #8, Material Terms:

- i. that there is a problem;
- ii. that they believe the problem is a breach of a material term of the tenancy agreement;
- iii. that the problem must be fixed by a deadline included in the letter; and
- iv. that if the problem is not fixed by the deadline, the party will end the tenancy.

The landlord made repeated requests to the tenants to pay for the cleaning costs but failed to inform the tenants in writing that the landlord perceived the failure to pay to be a breach of a material term of the tenancy agreement and that it could result in the ending of the tenancy.

I find that the landlord failed to prove sufficient grounds to issue the 1 Month Notice.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenants may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, dated October 19, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: December 12, 2016

Residential Tenancy Branch