



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NJM HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause dated January 27, 2017. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause dated January 27, 2017 be upheld or cancelled?

Background and Evidence

The month to month tenancy started March 15, 2016 and the tenant is required to pay rent of \$450.00 on the first day of every month. The rental unit was described as being a "studio apartment" meaning it has a bathroom but no kitchen. The rental unit is located above a restaurant.

The 1 Month Notice to End Tenancy for Cause ("1 Month Notice") that is the subject of this proceeding was served upon the tenant in person on January 27, 2017 and has a stated effective date of February 28, 2017. The reason indicated for ending the tenancy, as indicated on the 1 Month Notice, is that the "Tenant has caused extraordinary damage to the unit/site or property/park". In the space provided on the form for describing details of the cause the landlord wrote "Tenant failed to report a water leak in the unit for weeks which caused lots of (preventable) damage to the property."

Below, I have summarized the parties' respective testimony, evidence and positions.

Landlord's position

The landlord testified that the restaurant tenant reported water leaking from the ceiling in the restaurant to the person managing the property while the landlord was out of the country in November 2016 (herein referred to as "the manager"). The manager attempted to contact the landlord's handyman and then called a plumber to the property. The plumber crawled into the 4 ft. attic space between the restaurant and the rental units above as this is where plumbing lines are located. The plumber could find no leak from a plumbing line and advised the manager to call back if the leak recurs.

The manager asked the tenants living above the restaurant, including the tenant, if they had any leaks or spills in their units. The tenant advised that there were no leaks in his unit.

The restaurant tenant reported further leaks that would come and go. In January 2017 the plumber was called back to the property and while in the attic space he observed that the underside of the floor of the rental unit above was wet.

The landlord contacted the tenant to seek consent to enter the rental unit to investigate the wet floor. Initially, the tenant declined to give consent as he wanted to be at the rental unit during the inspection. The landlord pressed further, telling the tenant that the situation was an emergency. The tenant relented and permitted the landlord to enter.

Upon entering the rental unit with the plumber, a basin under the bathroom sink full of water was discovered. The plumber determined the bathroom sink faucet was leaking and the plumber replaced the faucet. There have been no further reports of water leaks since the faucet was replaced.

As for water damage, the landlord testified that a section of drywall in the restaurant ceiling had to be patched and painted.

The landlord seeks to end the tenancy on the basis the tenant failed to report the water leak when he first noticed it and when the manager asked him if there were any water leaks in his unit the tenant advised that there were none, which was untrue. The tenant's lies caused the landlord to have to make repairs that would not otherwise be necessary had the bathroom faucet been replaced in a timely manner.

The landlord provided two photographs of the ceiling damage in the restaurant along with letters signed by the restaurant tenant, the plumber, and text messages received from the manager and the tenant concerning the leak.

The letter from the plumber described the water damage to the restaurant below as being caused by the placement of a bucket under the sink to catch water and the bucket was not emptied before it overflowed.

The letter from the restaurant tenant described the water leak as being on and off between November 2016 and January 26, 2017. The restaurant tenant described how a plumber had come to the property in November 2016 but did not find the source of the water leak. The water damage became worse in January 2017 when bubbles formed on the ceiling. The restaurant tenant was inconvenienced by the water leak and had to put buckets under the ceiling to catch the water drips.

Tenant's position

The tenant stated that he noticed water dripping under the bathroom sink in the summer time. The tenant put a basin under the sink to catch the water drips but he acknowledged that the basin apparently overflowed on occasion.

The tenant stated that when the manager and the landlord approached him they asked him if there was any water "flooding" or if the tub was "overflowing" in his unit but since he does not have a tub and there was no water pooling on the floor he answered no to their enquiries.

The tenant claims the reason he did not report the leak was because he had reported a "loose u-joint" to the landlord earlier in the tenancy and the landlord appeared to be unconcerned and bothered by the tenant's report. The tenant also stated that shortly after his tenancy started he noticed water leaking onto the floor when he had a shower because the shower curtain was too short. When the tenant reported this issue to the landlord the landlord told him to get a longer shower curtain.

The tenant pointed out that there was no damage to the floor in the bathroom. The tenant's Advocate argued that the damage was largely the result of the landlord not maintaining the plumbing or thoroughly investigating the leak when it was first reported in November 2016 and there was an unreasonable delay between November 2016 and January 2017. Alternatively, if the damage is found to be the result of the tenant's negligence, the damage that resulted does not amount to "extraordinary damage".

The tenant's Advocate submitted that the tenant suffers from the effects of a brain injury. The Executive Director of a brain injury group appeared at the hearing and confirmed this to be the case. The Executive Director testified that the tenant has difficulties with memory, planning, organizing and projecting the consequences of his behaviour.

The landlord was questioned as to whether he wrote the letter signed by the restaurant tenant. The landlord acknowledged that he did and stated that he presented it to the restaurant tenant for signature after she read it. The landlord and Advocate provided opposing submissions as to whether the restaurant tenant is sufficiently able to read and understand written English.

Landlord's rebuttal

The landlord denied that the tenant advised him of a loose u-joint. The landlord also pointed out that when the tenant reported water on the floor after having a shower the landlord purchased and supplied the tenant with longer shower curtain rings. The landlord explained that the delay in finding the source of the water leak was due to the tenant withholding information about a leak, the water leak was intermittent, and it was difficult to find a plumber willing to crawl around in the confined 4 ft. attic space which includes plumbing lines and joists.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice. In this case, the landlord bears the burden to prove that the tenant's actions or neglect caused extraordinary damage to the rental unit or property.

It is undisputed that water leaked through the ceiling of the restaurant located below the rental unit and the tenant had placed a basin under the bathroom sink to catch water that was dripping and on occasion the basin overflowed. I accept that upon inspection of the rental unit sink area by the landlord's plumber, the source of the water leak was determined to be the bathroom sink faucet in the rental unit. It is also clear to me that the tenant did not report the water leak to the landlord when he noticed water dripping under the sink and when the manager and the landlord asked about water leaking. Although the tenant provided disputed testimony that he report a "loose u-joint" to the landlord the there was no mention by the tenant that he advised the landlord that water was leaking. Further, the tenant's insistence that the leak was a "drip" is merely semantics.

Section 32 of the Act provides that both a landlord and a tenant have obligations to repair and maintain a rental unit and residential property. A landlord has the obligation to repair and maintain the rental unit and residential property except where the damage is the result of actions or neglect of the tenant. In most cases a leaking faucet is the landlord's responsibility to repair, as the leak is most often the result of age, wear and tear, or mechanical failure. However, a tenant may found to be negligent where a tenant is aware of repair issue and fails to take reasonable action to minimize damage that may result from the repair issue. Putting a basin under a dripping plumbing fixture is a very temporary remedy for a water leak and doing so is highly insufficient for a longer period of time as this remedy would require frequent monitoring and emptying of the basin. As demonstrated in this case, the tenant's remedy of putting a basin under the leak was ineffective and resulted in eventual water egress to the space below his unit. I find that a reasonable action would be to report the water leak to the landlord immediately after noticing it. In this case, the tenant never did report a water leak or "drip" and it was only after the landlord and plumber inspected the unit was the water leak discovered. Therefore, I find the tenant was negligent in failing to report the water leak to the landlord despite his motivation to remain silent about it.

In light of the above, I accept that the water damage to the restaurant below was the result of the tenant's failure to report the water leak to the landlord when he first noticed it and exacerbated when the manager made enquiries about water leaking in November 2016.

Although I am satisfied the tenant's negligence resulted in damage to the restaurant ceiling, I am not satisfied that the drywall patch and painting that was required to repair the damage amounts to *extraordinary* damage worthy of ending the tenancy, as explained below.

While I appreciate that even a small water leak has the potential to cause a great amount of damage, including mould, in this case I find that I did not hear of a great amount of damage. I did not hear of any damage to the bathroom cabinetry (if any), floor covering or subfloor in the rental unit. Nor, did I hear of any damage in the attic space below the rental unit or in the restaurant with the exception of wet drywall that was patched and repainted. I also note that the pictures of the drywall damage do not appear to show a large area of damage.

Having been unsatisfied the tenant's negligence caused *extraordinary* damage to the rental unit or property, I find the landlord has not proven the reason indicated on the 1

Month Notice dated January 27, 2017. Accordingly, **I cancel the 1 Month Notice dated January 27, 2017** with the effect that the tenancy continues at this time.

It is important to point out that I have cancelled the 1 Month Notice because I am unsatisfied the tenant's actions or neglect resulted in *extraordinary* damage; however, where a tenant causes any damage by way of their actions or neglect, **the landlord may pursue the tenant for compensation to rectify the damage**. The landlord in this case still has that right.

I find it troubling that the tenant was of the view he had "fixed" the problem by putting a basin under the leak or "drip". I note that in a text message provided as evidence, the tenant stated: "It was fine. I fixed the leak, by putting basin to catch the water. I wasn't having any problems. I didn't want to be a bother..." Accordingly, I appreciate the landlord's apprehension for continuing the tenancy and I find it appropriate to issue an ORDER to the tenant under section 62(3) of the Act with a view to reducing the likelihood the tenant fails to report a repair issue again.

Under section 62(3) of the Act, I have the authority to issue any order to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with the Act. In the circumstances presented to me, I find it appropriate to issue an ORDER to the tenant, as follows:

The tenant is ORDERED to report any deficiency or repair issue in the rental unit that he is aware of, no matter how minor it may appear to him, to the landlord without delay so that the landlord may determine the appropriate action to take to protect the property and minimize potential for further damage or loss.

The above order takes effect immediately after the tenant receives this decision. Failure to comply with an order of the Director, as delegated to an Arbitrator, is a basis for ending a tenancy under section 47(1)(l).

Considering the tenant has failed to report a repair issue, and upon hearing he has a medical condition that may impair his judgement in this regard, it is suggested to the landlord that more frequent inspections of the rental unit may be appropriate. As provided under section 29 of the Act, a landlord may perform a routine inspection of a rental unit once a month in addition to entering a rental unit for other reasons.

As for the manner in which a landlord may enter, section 29 of the Act provides for the landlord's restricted right to enter. The tenant would be well informed to consider that

where a landlord has given a tenant a proper written 24 hour notice of entry a tenant may not interfere with the landlord's entry. Below, I have reproduced section 29 for the parties' reference, with my emphasis underlined:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Conclusion

The 1 Month Notice issued on January 27, 2017 has been cancelled as I am unsatisfied the tenant caused *extraordinary* damage to the property. However, I have found that the tenant was negligent in failing to report a water leak to the landlord and the landlord remains at liberty to pursue the tenant for compensation for damages and loss the landlord may have suffered as a result of the tenant's negligence.

With this decision I have also issued an order to the tenant with respect to reporting all repair issues to the landlord in a timely manner.

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: March 06, 2017

Residential Tenancy Branch