



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC RP FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

The landlord gave undisputed sworn testimony that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice), with a corrected effective date of May 31, 2017, was personally served to the tenant on March 31, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of 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 an order to the landlord to make repairs to the rental unit?

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

Background and Evidence

This month-to-month tenancy began on November 30, 2014, with monthly rent currently set at \$950.00, payable on the first of each month. The landlord had collected a security deposit of \$475.00, which the landlord still holds.

The landlord issued the 1 Month Notice, providing two grounds:

1. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.
2. The tenant has not done required repairs of damage to the unit/site.

The landlord testified that the entire bathroom was newly renovated before the tenant had moved in, and the tenant had reported that the vanity was cracked because it was not installed right. The landlord testified that the tenant's husband had leaned on the vanity, exceeding the 60 pound limit, and cracked the top. The landlord testified that the tenant had agreed to replace the vanity, but now refused to do so. The tenant had offered to replace the vanity, but with a vanity that was from the 1970s. The landlord submitted that they had installed many vanities like this one, and they had never cracked. The landlord offered to fix the vanity, and send the bill to the tenant, but the tenant refused. The landlord subsequently issued the 1 Month Notice.

The tenant did not dispute the landlord's testimony that the vanity was cracked. The tenant did dispute, however, the reason why this crack had occurred. She testified that it was her who had leaned on it, and not her husband. The tenant believed that poor installation of the vanity may have caused the crack. The tenant submitted pictures in evidence which showed a gap. The tenant believed that the vanity should have been flush. She testified that she had attempted to compensate fifty percent of the cost of replacing the broken vanity, but the landlord had refused. She then purchased a new one for \$50.00, which the landlord had refused as it was not identical. She testified that she still had the vanity, which was stored in the shed.

The landlord replied in the hearing that the vanity was installed properly, and according to code. The landlord sent a letter to the tenant, dated February 10, 2016, requesting that the tenant repair the vanity, or a 1 Month Notice would be issued to the tenant.

Analysis

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

(1)(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed her application on April 5, 2017, five days after

receiving the 1 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

Although the landlord provided undisputed testimony that the tenant had cracked the vanity, the landlord did not provide sufficient evidence or details to support that the damage had occurred due to the tenant's actions. The tenant testified that the vanity cracked because of poor installation.

I find the landlord did not provide any evidence or testimony to support that the tenant was responsible for the cracked vanity. As the burden of proof falls on the landlord that they have cause to end this tenancy for the grounds provided, and in the absence of sufficient supporting evidence to demonstrate that it was due to the tenant's actions or neglect that the vanity had cracked, I am not satisfied that the landlord had demonstrated how the tenant had failed to repair the damage as required by section 32 of the *Act*, especially to a degree that is serious enough to warrant terminating this tenancy.

The landlord had also cited that the tenant had engaged in illegal activity as a reason for ending this tenancy. The landlord did not provide any testimony, nor did the landlord submit any written evidence, in support of this claim. In the absence of this information, and sufficient supporting evidence, I find the landlord has not established that the tenant had engaged in any illegal activity.

Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Although the tenant did provide some black and white photos of the home, she did not provide any further testimony to support that the landlord had failed in their obligations for maintaining the rental home in a state of repair that complies with Section 32 of the *Act* as stated above. I find there is insufficient evidence for me to make a finding that the landlord had failed to meet

their obligations regarding this matter, and on this basis I am dismissing the tenant's application for and order to the landlord to make repairs.

I find that the tenant is entitled to recover the filing fee for this application.

Conclusion

I allow the tenant's application, and the 1 Month Notice is cancelled. The 1 Month Notice of March 31 2017 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant's application for an order to the landlord to make repairs is dismissed.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 14, 2017

Residential Tenancy Branch