



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and the tenant attended the hearing and each gave affirmed testimony. Another person accompanied the tenant for support who also gave closing submissions on behalf of the tenant.

All evidence has been exchanged, and all has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on August 1, 2013 and reverted to a month to month tenancy after July 31, 2014, and the tenant still resides in the rental unit. Rent in the amount of \$835.00 per month is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$390.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 41 units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on September 26, 2017 the tenant was served with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided and it is dated September 26, 2017 and contains an effective date of vacancy of October 31, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the damage caused by the tenant is not extraordinary, but the caused damages to the rental unit needlessly. The spout in the bath tub and tiles on the wall were broken, and it appeared that someone had stood on the spout. An invoice has also been provided, which contains a notation from the contractor about it being broken by force. Also, the fridge wasn't working, and the landlord had an appliance person attend who said the fridge had been so stuffed with food it couldn't keep up with keeping food cold. The technician took some food out and a half hour later it worked properly. The cost to the landlord was \$103.95, which the landlord asked the tenant to pay at first, but waived it and asked the tenant to pay \$213.93 for the plumbing bill and \$294.00 for broken tiles in the bathroom. Despite sending a reminder letter, the tenant has not paid for the 2 invoices and the landlord issued the One Month Notice to End Tenancy for Cause. The building is 40 years old and a new fridge was provided for the tenant in August, 2016.

The tenant also left a mess which was attracting rodents.

The tenant testified that the bath tub spout was loose and the tenant asked the landlord to fix it. Also, tile behind the toilet was falling out. The tenant denies causing any damage to the rental unit and testified that it's not her fault but normal wear and tear.

The tenant further testified that the landlord did not change the fridge. The rubber seal on the door was loose and a technician fixed it.

When asked about police attendance at the rental unit, the tenant responded that a year ago the tenant had a problem with the tenant's ex-spouse and the tenant ended up in a transition house for a month.

The tenant's assistant submitted on behalf of the tenant that the tenant is suffering from trauma, having been a victim of violence with serious injuries. There is no way the tenant would deliberately damage the rental unit. The tenant is quiet, well respected

and volunteers in a few places in the community. The tenant went to Court and the tenant's spouse is allowed to spend time with the couple's child every week.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

In order to establish extraordinary damage, the damage has to be extraordinary. The landlord admitted that the damage is not extraordinary, and I do not find that broken tiles or a bath tub spout that is likely 40 years old is extraordinary damage.

With respect to the second reason for issuing the notice, the landlord testified that the tenant failed to pay the costs for repairs after written notice to do so, but I am not satisfied that the tenant was required to do so. A tenant is required to repair damage caused by a tenant that is beyond normal wear and tear, but unless the landlord can establish that the damage is beyond normal wear and tear, I cannot find that repaying the landlord for the repair costs is a material term of the tenancy agreement.

I have also reviewed the landlord's evidentiary material, and note that in the synopsis of events, some of the landlord's concerns were of the tenant's spouse, who no longer resides in the rental unit.

I am not satisfied that the landlord has established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and I hereby cancel it, and the tenancy continues.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, I am not satisfied that the tenant has established what order ought to be made, and I dismiss that portion of the tenant's application.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated September 26, 2017 is hereby cancelled and the tenancy continues.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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 08, 2017

Residential Tenancy Branch