Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1058569 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPT, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to cancel a One Month Notice to End Tenancy for Cause (the "Notice") and an Order for Possession for the Tenant to remain in the rental unit.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

As the Tenant is already in possession of the rental unit I find the Tenant has no need to obtain an Order of Possession. I amend the Tenant's Application to exclude her request for an Order of Possession.

An agent for the Landlord and the Tenant (along with her advocate) appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. At the start of the hearing I determined that the written evidence and the Notice of Hearing documents were served correctly in accordance with the *Residential Tenancy Act* (the "Act") and the Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties were given the opportunity to present their written evidence, cross-examine the other party and make submissions to me. While both parties submitted and presented a large amount of evidence, I have focused my attention to the matter at hand, being the reason the Landlord seeks to terminate the tenancy

documented on the Notice to End Tenancy. Therefore, I only refer to the relevant portions of the parties' evidence in relation to this reason in this decision.

Given the fact that this was a fourteen-year tenancy with no prior concerns, the parties were also provided an opportunity to discuss the issues and resolve them through mutual agreement. Despite a lengthy discussion between the participants, they were unable to reach mutual agreement in this dispute. Therefore, I turned my mind to the issues below.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled, pursuant to section 47 of the Act?

If not, is the Landlord subsequently entitled to an Order for Possession, pursuant to section 55 of the Act?

Background and Evidence

The Tenant has resided at the rental property since July of 2004 and claims she has been a good tenant. The Landlord submitted the latest copy of a rental agreement signed by the parties on March 28, 2012 for a tenancy beginning on March 9, 2012 for the monthly rent of $600.00 due on the last banking day of each month (no definition of banking day is provided). The agreement also indicates a security deposit of $300.00 was paid and that the Tenant was transferring from another rental unit in the residential property.

On or about December 29, 2017, the Tenant accidentally left a faucet running; when she discovered the water had partially flooded the floor, she set about lifting the flooring and having it dried. The Landlord was contacted to address the issue, which only affected the one rental unit. Photographs and drawings of the rental unit showing water damage in the bathroom, hallway, kitchen, utility room, closet and pantry were provided by both parties. The Tenant had attempted to dry out the affected areas and the Landlord acknowledged her efforts.

The photographs submitted into evidence show readings were taken to establish water content in the flooring and wall materials. The linoleum in some areas, such as the kitchen, were new in 2012 according to the Tenant. In the storage room, it was very old. The Tenant estimates that the carpeting was at least 25 years old and filthy from

normal use; the Landlord does not dispute this condition. The tiles in the bathroom appear to be ceramic or porcelain and had no popping or lifting as a result of the flooding. The Landlord stated that some baseboards had to be removed and will need to be replaced; the drywall did not require cutting, but some painting is needed to restore the walls.

The Tenant takes the position that the damage is about $2,102.00 based on an invoice dated January 29, 2018 from Total Restoration, which she provided as evidence. She later received a higher quote, but argues that the work estimated to be done is excessive given the small amount of flooding which occurred. She takes the position that the carpeting and flooring in certain areas were very old and worn, suggesting it is past its useful life.

She argued that she had located very similar linoleum flooring which could be used to patch the damaged area where there is newer flooring, an areas she describes as about 17 inches by 36 inches. She is 69 years of age and does not want to move and fears she may not find accommodation at a similar rate; she was prepared to pay the $2,102.00 to remain in the rental unit. Any higher amount would have required payment over time, which the Landlord's agent was not authorized to accept.

The Landlord testified that the $2,102.00 invoice was for the emergency call and initial clean up of the water damage. He provided a written estimate to complete the repairs to restore it to its previous condition, an amount of an additional $4,423.70; this work has not yet been done. The Landlord takes the position that the total damage is $6,525.00 and that he was instructed to end the tenancy as a result of the damage done. The Landlord also stated that the insurance deductible was $10,000.00 and no claim was submitted.

As a result the Landlord issued a One Month Notice to End Tenancy for Cause. The Landlord submitted into evidence a copy of a One Month Notice to End Tenancy for Cause issued on January 18, 2018 with an effective vacancy date of April 1, 2018 citing the Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the rental unit.

In addition, the Landlord submitted a copy of a Proof of Service document outlining that they served the Tenant with a One Month Notice on February 16, 2018 at 4:40 p.m. and that this service was witnessed by a third party.

However, the Tenant submitted in evidence a copy of a One Month Notice to End Tenancy for Cause issued on February 16, 2018 with an effective vacancy date of March 31, 2018 citing the Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the rental unit. From the evidence before me, I find that this later notice was the Notice ultimately served on the Tenant and referenced in the Landlord's Proof of Service. The Tenant submitted her Application for Dispute Resolution seeking to cancel this Notice on February 26, 2018.

Analysis

In relation to the Notice, I find the format and content of the Notice complied with Section 52 of the Act. The One Month Notice to End Tenancy for Cause dated February 16, 2018 was delivered on that date in person on the Tenant; it was served pursuant to section 47(1)(f) of the Act, which states that a Landlord may end a tenancy if "*the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property*." The Tenant made the Application to dispute the Notice on February 26, 2018, within the 10-day time limit stipulated by section 47(4) of the Act. The effective date of the Notice was April 1, 2018.

Under section 32(3) of the Act, a tenant is responsible for any repairs to the rental unit beyond normal wear and tear. Clearly, in this instance, a good portion of the damage was beyond "normal wear and tear". Under section 47(1)(g), a landlord can provide a notice to terminate a tenancy if the tenant causes extraordinary damage to a rental unit.

The Tenant attempted to negotiate a payment she believed would cover the needed repairs. However, in this case, the Landlord chose not to demand payment and has not applied for a monetary award. Instead, the Landlord decided to end the tenancy as a result of "extraordinary damage".

When a landlord issues a tenant with a Notice for Cause, the landlord bears the burden of proving the reasons on the Notice disputed by the tenant. Therefore, I first turn my mind to whether the Tenant has caused extraordinary damage to the rental site.

In determining whether or not the damage is considered to be "extraordinary", I considered the following:

1. The origin of the damage:

This refers to how the damage came about. If it is caused by an unanticipated event outside the control of either party, that might suggest an extraordinary repair. Normal wear and tear through the natural course of time, however, would not be considered extraordinary damage.

The Act specifically states that the damage must be caused by the tenant or a guest permitted by the tenant. In this instance, I find that the parties agree that the source of the water damage was a faucet accidentally left on by the Tenant.

There is no suggestion that the Tenant deliberately left the faucet on, and in fact, she made immediate attempts to mitigate any damage by promptly attempting to dry out the area and by contacting the Landlord. Nevertheless, the origin of the damage was the Tenant's neglect.

2. The extent of the damage:

This relates to the seriousness of the damage and the likely cost of repairs. For example, a wall or roof collapsing would be an extraordinary repair. In considering the extent of the damage, I also considered the age of the rental property, as well as the useful life of the flooring and materials.

With respect to the old carpeting and vinyl flooring in the storage room, I find that the materials are beyond their useful life and the replacement of the flooring in these areas would not constitute "extraordinary damage". However, the flooding did damage other areas of the rental unit including areas with relatively new flooring that was installed in 2012, as well as baseboards and walls.

The Landlord argues that the estimated cost of $6,525.00 for the emergency repair and the ultimate replacement justifies a finding of extraordinary damage, stating that the company used to provide the estimate was a reliable source. The Tenant argues that the estimate is excessive and goes beyond what is needed to do a patch repair to restore the original condition of these areas.

3. The nature of the damage:

This consideration relates to the nature of the damage and the necessary repair, and raises the question, "Does it amount to a total reconstruction"? This may overlap with the previous consideration to some extent.

What is proposed by the Landlord at this stage involves tearing out flooring and replacing it in several rooms, cleaning the carpeting, new painted baseboards and some painting/repairs to small holes in drywall to dry out the area. I note that his estimate also includes a repair to a bifold door which would not appear to be related to the damage caused by the Tenant on December 29th, which was the subject of the Notice.

Based on the photographic evidence and repair costs before me, I do find that the Tenant caused extraordinary damage to the rental unit. The flooding to the unit caused damage to a considerable portion of the rental premises and required emergency services to prevent further damage from mold.

The estimates do not provide for a replacement of the carpeting, which the Landlord could not have attributed to the Tenant in any event, since the carpeting was extremely old and in poor condition. I cannot find that the replacement of the linoleum floor in the smaller rooms to be excessive, as it was relatively new flooring and a patch repair with "similar" flooring is not reasonable.

Accordingly, I do not consider this to be a total reconstruction for the purpose of upgrading the unit, but rather, a reasonable repair that is required as a result of the damage done from the flooding. As the Landlord has met the burden of proof on a balance of probabilities, the Notice to End Tenancy is of full force and effect, and the Tenant's application must be dismissed,

Section 55(1) of the *Act* states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's application is dismissed. As I have made a finding that the Notice complies with Section 52 of the Act and the Tenants' Application to the cancel the One Month Notice is dismissed, the Landlord must be granted an Order of Possession.

This order will be effective two days after service upon the Tenant by the Landlord. The Tenant must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is hereby dismissed without leave to re-apply.

For the reasons set out above, I hereby grant an Order of Possession in favour of the Landlord effective two days after service upon the Tenant. This order is final and binding on the parties and may be enforced in the Supreme Court of British Columbia as an order of that court should the tenant fail to comply with it.

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: May 04, 2018

Residential Tenancy Branch