



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABOUGHOUH HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act*, (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on May 14, 2018.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the One Month Notice to End Tenancy for Cause, issued on May 14, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?

Background and Evidence

Both parties agreed that the tenancy began on March 1, 2005, as a three-year fix term tenancy, the Tenant stated that the tenancy had been renewed several times and had just recently, as of January 2018, became a month to month tenancy. Rent in the amount of \$1,016.00 is to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$425.00 security deposit and a \$450.00 pet damage deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The testimony of both parties is that the Landlord served the Tenant with the Notice on May 14, 2018, to end their tenancy. The notice indicated that the Tenancy would end on June 15, 2018. The reason checked off by the Agent within the 1 Month Notice was as follows:

- *Tenant has caused extraordinary damage to the unit/site property /park*

Both parties testified that in 2014 the Tenant had a cockroach infestation in her rental unit that had to be treated by professional pest control services.

The Landlord testified she inspected the Tenant's rental unit on May 7, 2018, and that during the inspection she had noted a strong order of cat urine and that the unit had not been kept in a reasonable state of cleanliness. The Landlord provided 31 pictures into documentary evidence that she testified, shows the damage to rental unit caused by the Tenant. The Landlord also provided the condition inspection report into documentary evidence, that detailed the damage she had noted needed to be repaired:

1. Missing door stopper in the entrance of the rental unit;
2. Closet doors are either off their track or broken;
3. Walls throughout the unit are covered in cat scratches;
4. Trim boards need to be repaired;
5. The carpets need to be repaired;
6. Bathroom cabinets are wrecked and need to be replaced;
7. All taps drip and need to be replaced;
8. Towel bar needs to be replaced;
9. Toilet needs to be replaced;
10. Appliances need to be replaced;
11. Whole unit was dirty and in need of a deep cleaning.

The Landlord testified that they are concerned that the Tenant's uncleanliness would lead to a new cockroach infestation and that due to the previous infestation and the

recent inspection the Landlord feels the need to end the tenancy to maintain the health and safety of the building and the other renters on site.

The Tenant testified that when the Landlord inspected, on May 7, 2018, her rental unit was dirty but that since then she had cleaned up and is committed to keeping the rental unit clean. The Tenant also testified that she had moved the cat litter boxes outside as well as the cat food and that doing this has removed the strong odors from the rental unit that the Landlord had noted in her inspection. The Tenant provided current pictures of her rental unit into documentary evidence.

Additionally, the Tenant testified that she had advised the previous property manager, back in 2008, that there was a problem with the carpets in the rental unit. She stated that the property manager had inspected the carpets at that time, and had stated that the carpets must have been installed wrong but that it would not be fixed until the Tenant moved out. The Tenant testified that there has been no regular maintenance done on her rental unit by the Landlord, throughout her 13-year tenancy.

In the Landlord's rebuttal to the Tenant's testimony, the Landlord testified that they would only do needed repairs to the rental unit once the Tenant had moved out, as they fear that the Tenant will damage what they repair.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice on May 17, 2018, three days after it was posted to the Tenant's front door. Pursuant to section 47(4) the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until May 27, 2018, to file her application to dispute the Notice. The Tenant filed her application on May 24, 2018, within the statutory time limit.

I accept the sworn testimony of both parties that the Tenant struggles with keeping the rental property clean. However, I find that the Tenant has taken steps to clean and improve the smell of the rental unit since the Landlord's May 7, 2018, inspection.

I accept the picture evidence provided by both parties, as the current condition of the rental unit, and I find that the pictures show an ageing rental unit with noticeable wear

and tear. I find that the rental unit was dirty at the time of the Landlord inspection; however, I saw no evidence of exceptional damage.

Additionally, I accept the sworn testimony of both parties that the Landlord has refused to repair and maintain this rental unit throughout its tenancy.

Landlord and tenant obligations to repair and maintain

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.

I find that many of the items that the Landlord noted as needing replacement due to being damaged by the Tenant have in fact reached the end of their useful life expectancy as laid out in the Residential Tenancy Policy Guideline #40, The Useful Life of Building Elements.

I find it unacceptable that a Landlord would refuse to conduct regular maintenance and repairs to a rental unit. I caution the Landlord, that they could be found to be in breach of section 32(1) of the *Act* by not maintaining the residential property as required, and that the Tenant may be entitled to compensation due to the Landlord's refusal to maintain the rental property while the tenancy continues.

I accept the testimony and picture evidence provided by the Tenant, and I find that she had taken the necessary steps to improve the cleanliness of the rental unit after the May 7, 2018, inspection. I also accept the Tenant's commitment to maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit. I also caution the Tenant she too must maintain the property as per obligations her under section 32(2) of the *Act*.

In this case, I find that the Landlord has not provided sufficient evidence, to satisfactorily me, that the Tenant has caused extraordinary damage to the rental unit.

In the absence of sufficient evidence to prove extraordinary damage, I must allow the Tenant's application to cancel the Notice.

Therefore, I find the Notice dated May 14, 2018, of no effect, and the tenancy continues until it is ended in accordance with the *Act*.

Conclusion

I grant the Tenant's application, and I find the Notice dated May 14, 2018, of no effect under 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: July 19, 2018

Residential Tenancy Branch