



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OLC, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a cancellation of the Notice to End Tenancy for Cause, more time to file the dispute notice, and an order requiring the Landlord to comply with the Act, Regulations and/or tenancy agreement. The Tenant also requests an order for payment of the filing fee.

The Landlord and Tenant appeared for the scheduled hearing. Neither party raised any issues with respect to the service of the Notice of Hearing or evidence submitted by the participants.

The Landlord stated that she received the Tenant’s evidence on July 12th and argued that it was past a due date and that she refused to accept the evidence upon delivery. The Tenant stated that the Landlord had been out of the country and that she went with a witness to deliver it upon her return and that it was refused. The Landlord suggested that the Tenant ought to have sent it by registered mail or left it with a house sitter she had at her place while she was away.

I find that leaving it with a house sitter or sending by registered mail would not have given the Landlord any additional time to review the evidence as she still would not have seen the evidence until she was back home. The Landlord refused to accept the evidence on July 12, 2018 at her own peril and I find that she was not prejudiced in any way by the evidence being delivered 8 days prior to the hearing.

The Landlord was given an opportunity to file her own evidence late as her original submission was in a format that could not be retrieved electronically by this office. In addition, the Landlord’s second page of her Notice to End Tenancy, which was the primary issue before the hearing, had not been submitted with her evidence and I provided her with additional time to submit it following the hearing. I find that the Landlord has not been prejudiced in the service or submission of any of the evidence and that the issue of the cancellation of the tenancy was to be heard.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The Tenant's Application specifically sought additional time to file a dispute to cancel a notice to end tenancy. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause a tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. A preliminary discussion confirmed that the Tenant received the Notice to End Tenancy on May 27th in person, and filed her claim on May 30th, within the required 10-day time period, and the claim for more time to file her dispute is not necessary. The Application is amended to withdraw that request.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

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

Is the Tenant entitled to an order requiring the Landlord to comply with the *Act*, Regulations and/or tenancy agreement, pursuant to section 62 of the *Act*?

Is the Tenant entitled to payment of her filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy began September 1, 2017 with a monthly rent of \$2,300.00. A copy of the tenancy agreement and addendum were submitted into evidence. The arrangement at the outset was for the Tenant to have two adults and her three children residing in the upstairs of the rental home; another tenant was residing in the basement suite.

The Landlord served a One Month Notice to End Tenancy on the Tenant May 27, 2018, which had a stated effective date of June 30, 2018. It was served in person on May 27, 2018, which is acknowledged by the Tenant. The reasons to end the tenancy as noted on the form are discussed below:

1. Tenant has allowed an unreasonable number of occupants in the suite;
2. Tenant has caused extraordinary damage to the suite or property;

3. Tenant has not done required repairs of damage to the unit;
4. Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

There were two additional pages from the Landlord that accompanied the notice explaining the extra occupants and negligence leading to property damage. The Landlord and Tenant gave the following testimony and evidence with respect to these stated reasons:

Unreasonable Number of Occupants:

The Landlord expressed concern over visitors in an email to the Tenant dated October 23, 2017 which stated that anyone staying more than 14 days requires notice to the Landlord, as she had noted a family member visiting there during the fall of 2017. She reminded the Tenant that the lease was intended for a family of five. The Landlord states that a cautionary notice was issued for two extra people living in the upstairs that are not listed on the tenancy agreement on April 28, 2018.

The Landlord states that she discovered a man living in the unfinished attached garage in May of 2018 and she submitted video evidence of a discussion with him. She states that she tried to address this issue with the Tenant but with no resolution. She said she provided a cautionary notice on May 11th and the Tenant was given 14 days to comply.

The Tenant testified that this person in the garage was a friend going through a transition that needed a roof over his head for a few days and that she had him vacate the garage after staying about 6 days. The Landlord argues that it was more like 2 weeks, based on her inspections and visits to the home.

The Tenant explained that her mother-in-law came to visit Canada and stayed with her and her husband in the fall of 2017, but that the marriage ended and her husband and mother-in-law moved out. She has three children and in order to manage the household, she had her adult cousin move in to provide support; this person continues to reside with her.

She argues that the lease allows for 2 adults and 3 children and that she does not have an unreasonable number of people residing in the home. A friend's child who is now 17 moved in for a brief period of time before leaving the country as well during the tenancy, she left June 3, 2018. The Tenant argues that there is not an unreasonable number of occupants and that since June 3rd (shortly after receiving this notice), she has only had the 2 adults and 3 children residing in the home.

Damage and Repairs:

The Landlord states that the Tenant took possession when the home was in pristine condition. She provided photographs and evidence of what she argues is considerable damage happening within the home and asks for an Order of Possession, as she had given cautionary notices to the Tenant on November 8 and April 28, 2018 about her concerns of damage to the property.

An October 23, 2017 email mentions the garage door, the fireplace and dining room light. Her letter of November 8, 2017 indicated that there would be monthly inspections to ensure that her property was kept in good condition. On April 28, 2018, the Landlord sent a warning to the Tenants that there was water leaking from upstairs to the downstairs rental unit due to an overflowing bathtub when no parents were home. As a result, the ceiling downstairs needed replacing and that tenant's mattress had to be sent for professional drying.

The Landlord testified that hardwood flooring was damaged (scratches from chair legs and slight lifting of boards due to moisture, which she repaired), broken blind, drywall damage, baseboard damage, inside locks broken or changed, window screen broken, light in dining room broken and exhaust fans were not being used as requested which resulted in mold. Evidence submitted indicates that the Landlord attempted to glue the wood flooring back down, but that it required more work which she completed.

The Tenant states that her son had a minor incident with his scooter and hit the garage and that she was asked by the Landlord to repair the garage door and replace a light, which she immediately attended to. She indicates that a fireplace surround fixing was removed due to a safety issue for her children and that it is not broken and can be replaced at the end of the tenancy.

She stated that there was a scratch on the wall which is normal wear and tear. She says that the exhaust fan is always on when using the shower, although there is not great circulation in the bathrooms as the basement tenant also gets mold from moisture building up.

She indicates that she has done all repairs and that photographs were submitted into evidence in support of this; she admits that any scratches to the flooring haven't been repaired but that she will attend to the scratches upon moving out. Her email to the Landlord on April 28, 2018 indicated that she investigated the water concerns and that the cousin said nothing had happened and the son said he was told by the Landlord that there had been water on the floor.

She states that aside from the garage and light, she was not aware of these additional concerns until raised by the Landlord in her Notice to End Tenancy and that this being her only notice, she attended to the minor repairs. She argues that she is not liable for normal wear and tear to the rental unit.

The Landlord indicated that she had completed roof repairs including the addition of extra roof venting to improve circulation in January of 2018 and then installed high efficiency exhaust fans in all bathrooms around February, as evidenced by a letter from an electric company; these devices are automatic and do not require an occupant to switch them on and off. She states she is unsure whether this has improved the moisture issue in the home.

The Tenant provided the Landlord with an email dated May 11, 2018 in response to her concerns and indicated that she felt her right to peace, quiet and privacy were being infringed by the frequent inspections at the rental unit. She indicated to the Landlord that she has a right to have guests and that the frequency of the inspections disturbs her right to privacy. She indicated that she will notify the Landlord of any repairs needed, and will continue to pay the rent and utilities. She stated she did not damage the house or do anything illegal but that she and her guests are feeling that the frequent visits constitute an unreasonable disturbance.

The parties had a brief discussion over payment of June and July rent, which appeared to be in dispute as well. The Tenant argues that the Notice to End Tenancy ought to be cancelled as she cannot find a place to live with three children as there is almost zero occupancy rates in the area.

Analysis

Under section 47 of the Act, a landlord may end a tenancy for cause for the following reasons (bolding added):

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(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,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential 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;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Based on undisputed testimony of the Landlord, I find that the Tenant was served with the Notice to End Tenancy for Cause, using the form required under section 52 of the Act. I now turn my attention to the reasons given to end the tenancy.

Unreasonable Number of Occupants:

The written tenancy agreement contains the usual terms regarding “occupants and invited guests”: *“The Landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests. If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end tenancy.”*

I have considered the evidence of both parties and clearly some of the dates and facts of visitors and guests are in dispute. However, I am not satisfied that the Landlord has proven that the number of occupants is excessive or unreasonable. The lease was for a family of five people. The Tenant is entitled to have guests visit, which she admits she has done from time to time.

With the exception of the cousin, these people have not stayed long and were removed when the Landlord expressed concerns. The cousin has effectively replaced the second adult on the lease following the end of the Tenant’s marriage and I cannot consider her presence to be unreasonable. Her presence would not significantly alter the use of the utilities, which are paid by the Tenant in any event. Nor would her presence be expected to cause more wear and tear on the property as the number of adult occupants has not changed.

I find that the Landlord has not proven that there is an unreasonable number of occupants. She expressed her concerns about guests and on each occasion, it appears that the Tenant complied and removed the guest within a reasonable amount of time. The number of normal occupants has not changed during the tenancy and is currently two adults and three children, as was the case at the start of the tenancy.

Repairs and Extraordinary Damage/Breach of Material Term:

The Landlord contends that the tenancy ought to end because of damage to the property and she fears that the home will fall into a state of disrepair. In an email from the Landlord to the Tenant dated October 23, 2017, it seems to set out the Landlord's expectations for the use of the property: *"We are not landlord in the true sense since this is the only property we own and plan for ourselves or our kids to live there in the future. In other words we love that home and really want it to stay in the pristine condition it was handed to you in."*

Although it is reasonable to assume that all landlords want to have their property remain in "pristine" condition throughout a tenancy, the reality is that this is a busy family home with adults and children, and that there will be normal wear and tear. Under the legislation, the Tenant is not liable for normal wear and tear to the property, only damage that is due to negligence or deliberate actions:

Under section 32 of the Act, *"a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property to which the tenant has access' and, a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant; a tenant is not required to make repairs for reasonable wear and tear."*

The onus of proof falls to the Landlord to prove that the damage she recorded falls outside normal wear and tear, and that the Tenant failed to make repairs in a timely manner upon receiving notice.

It is a simple fact that standards of reasonable wear and tear will differ from person to person. What is normal wear and tear to one person, may be viewed as extraordinary damage to another. The issue before me is to determine whether the damage claimed is of such a extraordinary nature that it warrants an end to the tenancy, and whether the repairs are being made by the Tenant.

I have reviewed the photographs submitted by both parties and considered the testimony. The Landlord has failed to prove that the damage to the property is extraordinary in nature or, in some instances, that it goes beyond normal wear and tear.

With respect to the water damage, the Landlord failed to prove that it was due to the Tenant's negligence and there was no evidence showing the damage or costs of repair. The Tenant will be responsible for any damage beyond that of normal wear and tear and for the most part, that is addressed at the end of the tenancy once the Tenant vacates and completes the cleaning and minor repairs.

Repairs that need more urgent attention must be dealt with by the Tenant, if within the Tenant's responsibility. I find that the Tenant, once given notice of specific concerns such as the garage door and dining room light, attended to those repairs as requested within a reasonable time period. The door lock on the inside bedroom is not in breach of section 31 of the Act, which requires the Tenant to provide the Landlord with a key if the lock to access the rental unit is changed. Other minor repair issues were rectified and I accept the Tenant's testimony and evidence in that respect.

Given the evidence before me, it does not appear that the Tenant has allowed the rental unit to fall into a state of disrepair; rather, she appears to have maintained a state of health, cleanliness and sanitary standards expected while running a busy household.

I find that the Landlord has failed to provide sufficient evidence to support the Notice to End Tenancy for Cause; accordingly, the Notice is cancelled and of no force or effect. The tenancy shall continue until terminated with proper notice from either party.

Order to Comply:

The Tenant has brought forward a claim that her right to privacy and quiet use and enjoyment of the rental unit has been infringed upon. This appears to stem from the frequent visits from the Landlord to "checkup" on her property, which she expects to be maintained in pristine condition. The Landlord has also videotaped conversations with a guest in the home, while questioning him at length.

The Tenant is entitled to quiet use and enjoyment of the property under section 28 of the Act, which includes reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the unit subject to a landlord's right to enter under section 29 and use of the common areas free from significant interference.

The Landlord's right to enter the rental unit is restricted that section of the Act, which states that a tenant must give permission at the time of the entry, notice must be given at least 24 hours prior and not more than 30 days before the entry, the purpose for entering must be given and be reasonable, or other circumstances such as in an emergency. The Act provides for a condition inspection to be completed at the start and at the end of the tenancy, but does not provide for monthly reviews and inspections. Each time the Landlord requests access, there must be a purpose for gaining access, and that purpose must be reasonable.

The Landlord is in the business of renting property, and must comply with all legislation and regulations in that respect; frequent visits to “checkup” on a tenant is not appropriate unless there is reason to believe the property is at serious risk of damage.

As the Tenant was successful in her Application, I am awarding the filing fee of \$100.00; this amount may be deducted from her monthly rent.

Conclusion

The One Month Notice to End Tenancy for Cause issued on May 27, 2018 is hereby cancelled and of no force or effect. The tenancy shall continue until terminated with proper notice by either party.

I further find that the Landlord must comply with section 29 when scheduling visits to the rental unit.

The Tenant is entitled to payment of her filing fee of \$100.00, which may be credited against her monthly rent.

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 31, 2018

Residential Tenancy Branch