



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL, OPC
 CNC, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied as against 3 tenants for an Order of Possession for cause; a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of the application.

Two of the tenants have applied for an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord.

The landlord attended the hearing and gave affirmed testimony, and called 1 witness who gave affirmed testimony. One of the tenants named in the application filed by the landlord attended the hearing, and also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties agree that the tenants named in the Landlord's Application for Dispute Resolution are the tenants named in the tenancy agreement, and parents of the tenant who attended the hearing. The tenant who attended this hearing is the current occupant of the rental unit.

The landlord has provided copies of Canada Post cash register receipts and Registered Domestic Customer Receipts stamped by Canada Post on June 19, 2018 as evidence of having served all 3 tenants named in the Landlord's Application for Dispute Resolution by registered mail. I am satisfied that the landlord has served all 3 tenants in accordance with the *Residential Tenancy Act*, and I permit the tenant to act as agent and representative of the other 2 tenants.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided 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 reason(s) for issuing it, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for repair costs to a neighbouring unit?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2014 and reverted to a month-to-month tenancy after September 1, 2015. Rent in the amount of \$1,450.00 was originally payable on the 1st day of each month and was raised from time-to time, and is currently \$1,600.00 per month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$725.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on May 30, 2018 the landlord posted a One Month Notice to End Tenancy for Cause to the door of the rental unit, and a copy has been provided for this hearing. It is dated May 30, 2018 and contains an effective date of vacancy of July 1, 2018. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has assigned or sublet the rental unit without landlord's written consent.

On December 25, 2017 the building manager attended the rental unit due to water dripping in the unit below. The building manager found water on the floor in the bathroom and told the tenant to call the landlord to get a plumber over, but the tenant didn't contact the landlord. It was a small leak, but had the landlord known, it would have been taken care of right away. The tenant notified the landlord on January 3, 2018 and at that time water was still leaking. The landlord's father attended there in January with a plumber and the building manager and they turned off the water and fixed the leak.

The damage to the unit below included replacing some of the floors, repair work for water stains on the ceiling in the hallway, bathroom, dining room and living room. The landlord is now responsible for paying the Invoice, a copy of which has been provided, in the amount of \$4,757.39, which the landlord claims as against the tenants. The work was finished to the satisfaction of the unit below on May 22, 2018.

The landlord then became aware of noise complaints made about the tenant on December 26, 2017 and again on December 31, 2017. On January 3, 2018 the strata office asked the tenant to have a conversation, but that didn't happen so the strata imposed a \$200.00 fine. The tenant paid the fine to the landlord's father who paid it to the strata.

There has been a lot of wear and tear in the rental unit and when the landlord talked to the tenant he said he was going to move out at the end of September, 2018.

The landlord further testified that the tenancy agreement says that no sublet is allowed and the landlord thinks someone else lives there, however the tenant has said there was only 1 girl staying there.

The landlord's witness is the landlord's mother and testified that her husband went to the rental unit for a minor repair and arrived home saying that the stove knobs were broken, the rental unit was not being taken care of and everything is getting ruined. The witness called the tenant and said that the landlord preferred the tenant to leave but he said he didn't have time to find a place or to look at another place. The witness wanted confirmation from the tenant that he'd vacate after his exams were finished. The tenant is very focused on his studies and his priority is not taking care of the rental unit.

The tenant's name isn't on the tenancy agreement, and prior to any incidents the witness printed off a blank one and called the tenant to meet and sign it. The landlord wanted a date to end the tenancy, taking the tenant's situation into consideration, but the tenant said he might be gone out of Canada and his mother might move back in.

There was not an inspection of the rental unit completed by the landlord or her parents.

The tenant testified that the tenancy agreement is between the landlord and the tenant's parents. The tenant moved in about 2 years ago and his parents moved out. The landlord was notified and knew the tenant was paying rent, but the parties have never met or spoken. The tenancy is renewed every 6 months verbally with the landlord's dad.

The tenant further testified that the dishwasher broke down and the tenant asked the landlord to fix it, and the landlord's father said he couldn't. The next day the landlord's mom called the tenant and said he had to be out in a month, but the tenant replied that he wasn't able to do that. The landlord's mother also said that the tenant wasn't taking care of the rental unit, and that after the mortgage gets paid, there's not much money left, and the rental is an investment for them. She told the tenant to move by the end of the month so she could rent it for a higher price.

The tenant wanted to work it out due to exams in September, 2018. The landlord's mother offered a 6 month lease at \$1,700.00, or \$1,800.00 per month for a year. The tenant couldn't afford it, so didn't sign a new tenancy agreement and told the landlord's mother that he'd move out at the end of October, 2018 and mentioned that he may move to Ireland. Three or 4 days later, the tenant was served with the One Month Notice to End Tenancy for Cause.

With respect to the noise complaint, the tenant gave the neighbour who complained flowers and apologized before going to the strata meeting. The tenant accepted the fine and paid it to the landlord's dad, and there were no problems since.

The tenant didn't know about the water leaking and the report from the building manager says there were lots of leaks. The report of the plumber says that the pipes in both sinks in the bathrooms are old and rusty and should be replaced. The leak in the bathroom was very tiny and not pooling on the floor but simply went down into the suite below. The rental unit was not flooded. The rental complex is 40 years old and things happen. If the landlord had maintained it, nothing would have happened. The cabinets are old and rotted and the landlord even fixed a cabinet with tape.

The tenant did not sublet the rental unit but was studying with a classmate for a medical board examination. The classmate stayed for 5 months over 2 different years, but the tenant did not receive any money from her, nor did the tenant rent the unit. The classmate was on a Visitor Visa, and the landlord's father knew about it.

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 given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute.

With respect to the first reason: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or

the landlord, the parties agree that the tenant owned up to it, paid the strata fine to the landlord's father, and the tenant testified he apologized with flowers to the complainant. Further, those were incidents that took place 5 months before the One Month Notice to End Tenancy for Cause was issued, and there have been no noise complaints since December, 2017. I don't find that such noise complaints are a sufficient reason to end the tenancy.

Neither the landlord nor the landlord's mother disputed the tenant's testimony that the rental unit is old and requires updating. The tenant testified that he didn't know about the leak; there was no flooding or pooling in the rental unit. The landlord's position is that the tenant was told to call the landlord and didn't do so and the landlord didn't find out until days later, and that had the landlord known earlier, the damage may have been reduced. I'm not convinced that that's the case. It is just as likely that the leaks existed and got worse over time, and finally gave way into the suite below. Further, by the time the tenant was aware, the damage had already been done to the rental unit below or was inevitable. The landlord's mother testified that no inspection was done. In the circumstances, I am not satisfied that the landlord has established that the tenant put the landlord's property at significant risk.

The tenant also testified that he did not sublet, but a classmate stayed at the rental unit, without any charge, for a time over 2 different years, and the landlord did not dispute the testimony that her father was aware of that. The landlord and the tenant have never met or spoken, and the tenant mostly dealt with the tenancy through the landlord's parents. I am not satisfied that the landlord has established a sublet, and I dismiss the landlord's application for an Order of Possession for cause. The tenant's application is allowed, and the One Month Notice to End Tenancy for Cause is cancelled.

With respect to the landlord's monetary claim, in order to be successful, the landlord must satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

There is no evidence of inspections to the rental unit or of any maintenance done respecting the plumbing. It is an older unit, and I cannot hold the tenants responsible for damages caused when the landlord has not established mitigation.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee, and grant a monetary order in favour of the tenants as against the landlord in that amount, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

The One Month Notice to End Tenancy for Cause dated May 30, 2018 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 26, 2018

Residential Tenancy Branch