



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, FFT

Introduction

This hearing convened as of a Tenant's Application for Dispute Resolution, filed on August 7, 2018, the Tenant requested an Order canceling a 1 Month Notice to End Tenancy issued on July 25, 2018, an Order that the Landlord comply with the *Residential Tenancy Act* and make repairs to the rental unit and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on September 24, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to make repairs to the rental unit?
3. Are the Tenants entitled to recover their filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord testified as follows. She confirmed that the tenancy originally began with the Tenant, B.B., on May 1, 2013. She further confirmed that the current amount of rent is \$1,550.00.

The reasons cited on the Notice were that the Tenants failed to pay a security or pet damage deposit within 30 days as required by the tenancy agreement.

The Landlord provided in evidence a copy of the tenancy agreement between the Landlord and a previous tenant, M.M., whom the Landlord identified as the current tenant, B.B.'s deceased husband.

The Landlord stated that when M.M. passed away in 2015 B.B. her son, M.M. and daughter in law, S.F. and their daughter, A.M. remained in the rental unit.

The Landlord testified that approximately three years ago the Tenants got a dog. She stated that she verbally asked the Tenants to pay a \$775.00 pet damage deposit and they refused. She confirmed that she did not put this request in writing until August 12, 2018 when she responded to the Tenants' Application for Dispute Resolution. A copy of that letter was provided in evidence.

In reply the Tenant B.B. testified as follows. B.B. stated that only recently did the Landlord ask for a pet damage deposit. B.B. responded that the pet is seven years old and she has had it for five years with the knowledge of the Landlord.

The Tenant also testified that she signed a residential tenancy agreement on February 28, 2018 in which the Landlord noted the Tenant was permitted to have the pet: "Angel". The copy of that document was not readable although the Tenant testified as to its contents.

The Tenant testified that in clause D of the tenancy agreement the Landlord wrote: “the Tenant is permitted to have the following pets: Angel.” The Tenant confirmed that at the time she signed the tenancy agreement in February of 2018 the Landlord made no mention of a pet damage deposit.

In terms of the request for repairs the Tenant testified that the dishwasher has not worked for 4.5 years. She confirmed that a repairperson came approximately four months ago (at the same time he was there to deal with an issue with the sink) and confirmed it was unrepairable. The Tenant stated that she has lived in the rental unit for five years and the dishwasher has not been working for the majority of time she has resided in the rental unit. The Tenant confirmed that she did not make a formal written request for the Landlord to replace the dishwasher, but noted that the Landlord only asked for a pet damage after the Tenant asked for the Landlord to replace the dishwasher.

In reply the Landlord stated that the dishwasher was new when the tenancy began. The Landlord stated that she was agreeable to replacing the dishwasher as soon as possible.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities, I find as follows.

The Landlord issued the Notice alleging the Tenants failed to pay a pet damage deposit in contravention of the requirements of the tenancy agreement.

While the original tenancy agreement provided that the Tenants were prohibited from having pets, I accept the testimony of the Tenant, B.B., that the most recent agreement from February 2018 permitted pets, and in particular referenced her dog, A. I also accept B.B.’s testimony that the current tenancy agreement makes no mention of a pet damage deposit and that until they asked the Landlord to replace the dishwasher, she had not asked for the Tenants to pay a pet damage deposit.

I find that the Landlord agreed the Tenants could have a pet when entering into the most recent tenancy agreement in February of 2018. Section 20(c) of the *Act* provides that a Landlord may not require a pet damage deposit at any other time than when

entering into a tenancy agreement or when the Landlord agrees the Tenants may have a pet; for greater clarity I reproduce that section as follows:

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

In consideration of the above, I find that the tenancy agreement does not require the payment of a pet damage deposit. I further find that the Landlord did not request a security deposit at the time of entering into the current tenancy agreement, which I also find is the time she confirmed her agreement that the Tenants could have a pet.

As such, I find the Landlord is not permitted to request a pet damage deposit; more importantly, I find the Tenants failure to pay such a deposit is not a reason to end this tenancy.

The Tenants' request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
 - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

The Landlord agreed that the dishwasher required replacement. She stated that it has been broken for a few months, not 4.5 years as claimed by the Tenants. Irrespective of the time the dishwasher has been inoperable, the Landlord has a responsibility, pursuant to the above noted sections as well as *Residential Tenancy Branch Policy Guideline 1—Responsibility for Residential Premises*, to repair appliances.

I therefore Order that the Landlord replace the dishwasher in the rental unit by no later than October 12, 2018.

The Landlord stated that she was leaving on a holiday at 2:00 p.m. on the date of the hearing and would be returning on October 10, 2018. As it was possible she might not receive my Decision prior to her departure I informed the parties of my Decision as well as my Order that the Landlord replace the dishwasher in the hearing. The Landlord confirmed her understanding that the tenancy would continue and that she was obligated to replace the dishwasher by October 12, 2018 regardless of her holiday.

Conclusion

The Tenants' Application to cancel the Notice is granted.

The Landlord shall, by no later than October 12, 2018, replace the dishwasher in the rental unit.

The Tenants are entitled to reduce their next month's rent by \$100.00 in order to recover the filing fee paid for their application.

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: September 24, 2018

Residential Tenancy Branch