



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the *Act*").

The landlord's agent, the landlord's building manager and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The Tenant G.R. (the tenant) indicated that she would be the primary speaker for the tenants. The tenants also had advocate attend the hearing to assist them with submissions. The landlord's agent (the landlord) stated that he would be the primary speaker for the landlord.

While I have turned my mind to all the documentary evidence, including the testimony of the parties and witness testimony, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) sent to them on December 13, 2018, and evidentiary package sent to them on January 02, 2018, both by way of registered mail. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and an evidentiary package.

The landlord testified that they personally served their first evidence package to the tenants on January 09, 2019, and attempted to serve another evidence package to the tenants on the night before the hearing took place on January 21, 2019. The landlord's building manager stated that they had a witness for this service but that the witness was not on the call. The landlord stated that they thought that they had submitted a copy of a witness statement, however; I could not find any witness statement in the evidence submitted to the Residential Tenancy Branch.

The tenant disputed service of the landlord's first evidence package and stated that they were not served any evidence on January 09, 2019. The tenant acknowledged that the landlord tried to serve evidence to them on the night before the hearing, which they stated that they would not accept as it was not served in accordance with the Residential Tenancy Branch Rules of Procedure and the tenants would not have a chance to formally respond to the evidence in the hearing.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing. As the landlord was not able to prove service of their evidence to the tenants, based on a balance of probabilities, I accept the tenants' affirmed testimony that the landlord tried to serve their evidence to them on the night before the hearing.

I find that the tenants would be prejudiced by this late service as they did not have a chance to respond to the landlord's evidence, however; I find that the landlord provided the tenancy agreement and Condition Inspection Report which were both signed by Tenant R.B. and that the tenants are not prejudiced by the consideration of documents that they have signed. For the above reasons I find that I will consider the tenancy agreement and Condition Inspection Report, but that the remainder of the landlord's evidence is not accepted for consideration.

The tenant testified that they received the One Month Notice on December 13, 2018, which was sent by registered mail to them on December 12, 2018. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the One Month Notice on December 13, 2018.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

Written evidence was provided by the landlord that this tenancy began on August 01, 2012, with a monthly rent in the amount of \$750.00, due on the first day of each month. The landlord confirmed that they retain a security deposit in the amount of \$375.00. In addition to the tenancy agreement noted above, the landlord also provided in their evidence a copy of a Condition Inspection Report signed on July 23, 2012, by Tenant

R.B. that indicates the fridge was to be replaced and that the carpets were in fair condition, although they needed to be cleaned.

A copy of the signed One Month Notice dated December 12, 2018, was entered into evidence by the tenants. In the One Month Notice, requiring the tenants to end this tenancy by January 31, 2019, the landlord cited the following reason for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs to the unit/site

In the Details of Claim section the landlord has indicated that the “Tenant has made alterations to the unit without Owner’s approval. Carpet removed throughout.”

The tenants provided in their evidence:

- A copy of a written statement from Tenant R.B. indicating that the tenants were not happy with the carpets, due to their filthy condition, and that in lieu of new carpets they were provided a new fridge. Tenant R.B. further states that they have been getting bites from an assortment of bugs which they felt was due to the carpet. Tenant R.B. indicates that former building managers for the landlord had promised new carpets with measurements being taken on multiple occasions and no action taken. Tenant R.B. states that the bug infestation is gone now due to the removal of the carpet;
- A copy of a written statement from Tenant G.R. (the tenant) who states that the carpet was well over 25 years old, filthy, thread bare and insect riddled. The tenant maintains that they were told that the carpet was going to be replaced and that measurements were taken twice but that nothing ever came of it. The tenant indicates that the landlord has been aware of the carpet having been removed and that they sealed and painted the cement at their own expense which they believe has improved the suite. The tenant indicates that they stated to the building manager that they would be happy to replace the carpet if the notice to end tenancy was cancelled;
- A copy of a witness statement dated December 18, 2018, which indicates that the tenants are no longer complaining about bug bites since the carpet was removed; and

- A copy of a list of items to be addressed in the rental unit which states that the carpet is filthy. The tenant has put a note on this list that it was written at the time that they took possession of the rental unit and that the landlord never provided a copy of the Condition Inspection Report signed on July 23, 2012.

The landlord testified that the carpets were removed throughout the rental unit without the landlord's consent. The landlord stated that they have asked the tenant to put the carpet back six months ago but that the tenants have not completed the required repair as of the time of the hearing. The landlord submitted that they did not promise the tenants to replace the carpet. The landlord testified that they had a pest control professional attend the rental unit in May 2018 who did not find any evidence of an infestation in the rental unit and that the carpets were removed at that time. The landlord admitted that the carpets were at least 14 to 15 years old.

The building manager confirmed that she did an inspection of the rental unit in August 2018, shortly after starting her position as the building manager, and had advised the tenants that the removal of the carpets was not acceptable. The building manager testified that she had told the tenants that they must put the carpets back.

The tenant submitted that they were verbally promised by past building managers that their carpet would be replaced and that different people had been sent to measure the rental unit for new carpets. The tenant maintained that a past property manager had told the tenants that it would save the landlord money on labour if they were to remove the carpets themselves.

Tenant R.B. indicated that they had fumigated the rental unit at their own expense and that the condition of the rental unit is better with the carpets removed. Tenant R.B. stated that they were not advised by the landlord to replace the carpet until receiving the One Month Notice. Tenant R.B. maintained that the building manager indicated that if the tenants replaced the carpet, the landlord would withdraw the notice to end tenancy.

The advocate referred to the policy guidelines which state that it is the landlord's responsibility to provide carpets in a reasonable state of repair and submitted that the carpets were past their useful life due to their age.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon

receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenants disputed this notice on December 13, 2018, and since I have found that the One Month Notice was served to the tenants on December 13, 2018, I find that the tenants have applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find that the landlord bears the burden to prove that the tenants have caused extraordinary damage to the unit and have not done required repairs to the unit.

I have reviewed all documentary evidence including the affirmed testimony and, on a balance of probabilities, I find the tenants have not caused extraordinary damage to the rental unit.

I find that is undisputed that the tenants have removed the carpet from the rental unit. I further find that it is undisputed that the carpets were at least 14 to 15 years old. Although the carpets may have been in acceptable condition at the beginning of the tenancy, Residential Tenancy Policy Guideline #40 establishes that the useful life of a carpet is generally 10 years. Based on a balance of probabilities and the landlord's testimony, I find that the carpets were well past their useful life. As an ordinary repair for a rental unit is to replace the carpets approximately every 10 years, I do not find the re-installation of carpets into the rental unit, at least 15 years from the last time that the carpets were installed, to be an extraordinary repair and for this reason I do not find that the removal of the carpets has caused extraordinary damage to the rental unit. I find that, based on a balance of probabilities, it is likely that the landlord would have to replace the carpets for the next tenancy.

In addition to the above, I find that the landlord has not provided any actual evidence of the present condition of the rental unit which would demonstrate that there is extraordinary damage.

Section 32 of the Act establishes that the tenants must repair damage to the rental unit that is caused by their actions or neglect.

Residential Tenancy Policy Guideline # 1 establishes that changes to the rental unit, not explicitly consented to by the landlord, must be returned to the original condition. The

guideline also goes on to say that “if the tenant does not return the rental unit to its original condition before vacating, the landlord may return the rental unit to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.”

I find that the tenants did not have the right to remove the carpet without the landlord's written consent. Although the tenants have stated that the landlord promised to replace the carpet and that past agents of the landlord gave permission to remove the carpet, I find that there is no documentary evidence to support these statements. I find that the Condition Inspection Report indicates that the fridge is to be replaced and the carpets are to be cleaned which matches with Tenant R.B.'s statement that the fridge was replaced in lieu of new carpets and Tenant G.R.'s own condition report which only indicates that the carpets were dirty but makes no mention of a promise for them to be replaced.

Due to the fact that the former building managers are not available to confirm or deny the tenants' statements, I am not able to determine if any verbal promises have been made regarding the replacement of the carpets or if the tenants were genuinely under the impression that the removal of the carpets was acceptable to the landlord.

In consideration of the above, I further find that the landlord has not provided any evidence that they have clearly expressed in writing to the tenants that the removal of the carpet was not acceptable and that they require the tenants to return the rental unit to its original condition, with carpeting in the places where it has been removed. I find that the landlord has not demonstrated that they gave the tenant a reasonable amount of time to complete these repairs as there is no documentary evidence of the landlord's request with a reasonable time for the repairs to be completed.

I find that the tenants have indicated that they are willing return the rental unit to its original condition if the tenancy is allowed to continue. As there is no evidence to the contrary, based on a balance of probabilities, I accept the tenants' testimony that they have not been given a request to repair the carpets and a reasonable time to complete the repairs, other than being served the One Month Notice. For the above reasons, I find the landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the tenants.

Therefore, the One Month Notice dated December 12, 2018, is set aside and this tenancy continues until it is ended in accordance with the *Act*.

I note that it would be beneficial to the landlord and the tenants to work together and agree to something in writing regarding the installation of carpets or other flooring. Whether or not an agreement can be reached in writing between the parties, the landlord is at liberty to formally request in writing that the tenant do the required repairs to the carpet and give the tenants a reasonable time to complete those repairs.

Conclusion

The tenants are successful in their Application.

The One Month Notice dated December 12, 2018, is cancelled and of no force or effect.

This tenancy will continue until it is ended in accordance with 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: January 24, 2019

Residential Tenancy Branch