



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 27, 2019.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice. The balance of the tenants’ application is dismissed, with leave to reapply.

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 evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on August 1, 2011. Rent in the amount of \$1,175.00 was payable on the first of each month. The tenants paid a security deposit of \$536.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on February 28, 2019.

The reason stated in the Notice was that the tenants have:

- Put the landlord's property at significant risk; and
- Not done the required repairs of damage to the unit.

The landlord testified that as a result of an inspection of the rental unit on November 11, and November 12, 2018. The tenants were required to make repairs to the wall in their child's bedroom, repair the damage caused by mould in the entrance and clean the rental unit as it is extremely dirty. The landlord stated that they gave the tenants 30 days to comply. The landlord stated that they had a follow up inspection on January 25, 2019, and the tenants made no effort to repair damage or clean the rental unit.

The landlord testified that the tenants caused a large hole in the bedroom wall. The landlord stated that the tenants have tried to make the repair; however, it was not completed properly as the repair has large cracks. Filed in evidence are photographs.

The landlord testified that the tenants are not venting the rental unit causing a mould issue. The landlord stated that the one of the entrance hallways was blocked off with no heat or air circulation causing the entrance to be covered in mould. The landlord stated that the tenants have attempted to clean the area; however, it appears it was not done properly and the walls are stained from the mould and the drywall will likely have to be removed. Filed in evidence are photographs of the entrance way.

The landlord testified that the tenants are not wiping the windows and this is causing mould to grow on the window sills and damaging the window casings. Filed in evidence are photographs of the windows.

The landlord testified that the tenants are causing damage to the carpets as they are extremely dirty and stained. Filed in evidence are photographs.

The landlord testified that the tenants are causing damage to the bathroom as they are having extremely long showers, using all the hot water that is meant for all of the occupants of the building. The landlord stated that the tenants are not venting the space properly and not wiping up the moisture and it is causing mould. Filed in evidence are photographs of mould in the bathroom.

The landlord testified that the tenants are also not cleaning the bathroom as they toilet looks like it have never been cleaned and the walls and floor around the toilet are extremely filthy and damaged.

The landlord testified the patio is deck is extremely dirty and there is mould and rust from the tenants' furniture. Filed in evidence are photographs.

The landlord testified that the tenants' car is also dripping oil on to the driveway. The landlord stated that the tenants did not clean up the oil as instructed and as a result they had to clean the oil up. The landlord stated that the tenants were instructed to place something under their vehicle to stop the oil from damaging the driveway. The landlord stated that the tenants have not done this and a large oil patch is again on the driveway.

The tenants testified that the hole in the bedroom was caused by their child playing on the bed.

The tenants testified that they did block the entrance hallway and they did not notice that there was mould growing in the room. The tenants stated that they have washed the walls with bleach and now have placed a heater in the room and have opened the door partially to allow air circulation.

The tenants testified that they do clean the mould from the windows; however, they have not done so since the summer of 2018.

The tenants testified that they do vacuum the carpet and they did have them steamed cleaned a couple of years ago.

The tenants testified that they did not agree to the inspection on January 25, 2019, as they would not be home and they did not have the unit cleaned at that time.

The tenants testified that they do clean the bathroom.

The tenants testified that the fan in the bathroom is not working properly as it drips water when it rains. The tenants stated that they do wipe the walls; however, they should not be expected to do it every time.

The tenants testified that they do clean the deck, as they power wash the deck in May of each year.

The tenants testified that they did pay the landlord for cleaning up the oil on the driveway. The tenants stated that they have taken their car in for an inspection and no oil leak was found.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants have:

- Put the landlord's property at significant risk; and
- Not done the required repairs of damage to the unit.

In this case the landlord inspected the rental unit on November 11 and 12, 2018. The tenants have been warned by the landlord that they must make the necessary repairs; this includes cleaning within 30 days. The landlord attended on January 25, 2019 to inspect the premises to ensure the tenants have complied.

The photographs taken on January 25, 2019, show there is damage caused by the neglect of the tenants by allowing mould to grow on windows, causing damage to the windows casings, which will have to be replaced.

Further, I find the tenants action of not wiping the windows since the summer 2018, neglectful, as the fall and winter months are the most important time period for wiping moisture, as the windows sweat during this time period. Also, the tenants made no effort to clean the mould from the windows, after they were instructed to do so.

The mould has also caused damage to an entry way that was blocked off and left unheated for a period of time. While I accept the tenants did attempt to clean the mould, I find it more likely than not that some area of the ceiling may have to be replaced as the photographs show the mould has gone into the drywall.

The bathroom is covered in mould, which includes counter tops; the toilet is significantly dirty and has not been cleaned for a considerable amount of time. The wall, baseboard, floor and heater around the toilet are damaged and appear to be covered in urine, which also has not been cleaned for a significant period of time and will have to be removed for health and safety reasons. I find the tenants' action is neglectful and not complying with the Act, as this is a health and safety issue that puts the landlord's property at significant risk.

The carpet in the rental is extremely dirty and has not been vacuumed for a period of time. The carpets are significantly dirty, stained and covered with debris. Even, if I accept there may have been staining at the start of the tenancy; I find the tenants' action is neglectful as they are not maintaining residence to a reasonable standard.

While I accept the tenants' child cause damage to the bedroom wall, which I accept the tenants have attempted to make the repair. However, that repair was not completed properly as the repair is cracking. This alone would not justify ending the tenancy.

Furthermore, the tenants' car continues to leak oil on the driveway, I do not accept the evidence of the tenants that their car was inspected, and there was no documentary evidence to support this, such as a letter from a qualified mechanic. The photographs show a large oil leak or other substance leaking on the drive way, after the driveway was cleaned.

I find based on the totality of the evidence, that the tenants' action is neglectful and not in compliance with the Act. This is putting the landlord's property at significant risk. The tenants were given sufficient notice to comply with the Act. The rental unit on January 25, 2019, was in an unreasonable state and this puts the landlord's property at significant risk.

I find the Notice has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenants' application to cancel the Notice. I find the tenancy legally ended on February 28, 2019, in accordance with the Act.

As the landlords have accepted occupancy rent for the month of March 2018, I find it appropriate to extend the effective vacancy date pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on March 31, 2019. This order must be served on the tenants and may be filed in the Supreme Court.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlord is granted an order of possession pursuant to section 55 of 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: March 14, 2019

Residential Tenancy Branch