



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, LRE, FF

Introduction

On May 30, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking to cancel a One Month Notice to End Tenancy for Cause dated May 30, 2019, ("the One Month Notice"). The Tenant also applied for an order for the Landlord to make repairs; to suspend or set conditions on the Landlords right of entry into the unit, and to recover the filing fee for the Application.

The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permits an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the Landlord has sufficient cause to end the tenancy. The Tenants request to cancel a One Month Notice

to End Tenancy for Cause proceeded. The remainder of the Tenant's claims are dismissed with leave to reapply.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy began on February 28, 2016, on a month to month basis. Rent in the amount of \$1,705.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$800.00.

The Landlord served the One Month Notice to the Tenant in person on May 30, 2019. The Notice has an effective date (the date the Tenant must move out) of June 30, 2019.

The Landlord selected the following reasons for ending the tenancy within the 1 Month Notice:

Tenant or a person permitted on the property by the Tenant has:

- *Put the Landlord's property at significant risk*

Tenant has engaged in illegal activity that has, or is likely to:

- *Damage the Landlord's property*

Tenant has caused extraordinary damage to the unit/site property /park

Tenant has not done required repairs of damage to the unit/site

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on May 30, 2019, within the required time period.

The Landlord testified that the Tenant breached a material term of the tenancy agreement by failing to abide by a no smoking rule. The Landlord testified that she detected the smell of smoke in the carport and sent the Tenant a letter regarding smoking. The Landlord referred to her documentary evidence of document dated

October 2018, that indicates that the Landlord detected a strong smell of cigarette smoke in the exterior carport.

The Landlord testified that the Tenant or a person permitted on the property by the Tenant engaged in illegal activity. The Landlord testified that there is an unauthorized person living on the property and there is a welding machine on the property.

The majority of the Landlords testimony relates to the Landlords position that the Tenant has put the Landlords property at significant risk and has caused extra ordinary damage to the rental unit and property. The Landlord also submits that the Tenant has not done required repairs of damage to the rental unit.

The Landlord testified that the Tenant is responsible for considerable damage to the property that is resulting in deterioration of the property. The Landlord provided testimony regarding damage to a door and door frame. She testified that there was damage to the inside of a bathroom door. She testified that she was not informed that the Tenant had repaired damage to a door.

The Landlord testified to the following:

- there is damage to an air vent.
- there are holes in some walls.
- the outside corner of the rental unit is missing siding; damaged.

The Landlord provided a copy of a move in condition inspection report completed on February 29, 2016. The Landlord testified that house was built in the 1960's.

The Landlord testified that she sent a letter to the Tenant on October 20, 2018 asking the Tenant to repair the items listed as soon as possible. The Landlord testified that she inspected the rental unit on May 2, 2019, and noticed that some repairs had been completed but she noticed additional damage.

The Landlord testified that she feels that some of the damage, such as punched walls and damaged doors was intentional and the damage that is present exceeds the amount of the security deposit. The Landlord provided photographs taken of the interior and exterior of the rental property.

In response to the Landlord's testimony, the Tenant submitted that the Landlord is just looking to end the tenancy without sufficient reason.

The Tenant testified that 90% of the items that the Landlord wants repaired were damaged when she moved into the rental unit. The Tenant acknowledged responsibility to repair items she is responsible for damaging; however, she will not fix pre-existing damage or items affected by normal wear and tear.

The Tenant testified that she repaired a door that she was responsible for damaging. She acknowledged that she did not inform the Landlord that it had been damaged. The Tenant acknowledged that a small floor tile at the base of the door needs replacement.

The Tenant testified that there are no holes punched in the walls. She testified that there are a number of nicks and scrapes and a marble size hole in a wall.

The Tenant testified that there is no proof that she is responsible for damage to the corner of the house.

The Tenant presented a witness, Mr. R.E. who is a part owner of the rental home. Mr. R.E. testified that the corner of the home has been a perennial problem in other tenancies.

The Tenant provided documents from previous Tenants at the rental home which indicates some of the damage was pre-existing.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reasons for ending the tenancy in the Notice are valid. Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord provided insufficient evidence that the Tenant or a person permitted on the property by the Tenant engaged in illegal activity. The Landlord's testimony on this related to an unauthorized person living on the property and a welding machine on the property. These issues are more relevant to a possible breach of a material term of a tenancy agreement and are not evidence of illegal activity.

I find that the Landlord provided insufficient evidence that the Tenant breached a material term of the tenancy agreement by failing to abide by a no smoking rule after receiving written notice from the Landlord. While the Landlord may have sent a copy of the October 2018, report to the Tenant, there is no evidence that the Landlord served a breach letter and that the Tenant continued to smoke in the unit after receiving the letter.

I have reviewed the Landlord's photographic evidence of damage and I have reviewed the condition inspection report. I am mindful that the house was built in the 1960's. I find that the condition of the rental unit was assessed as good or fair with some items such as doors and floors having marks. I find that the photographs show slight damage such as a small floor tile; a small hole in the wall; damaged wood on a door; and siding missing from the exterior corner of the home. I find that damage to the exterior corner of the home was pre-existing.

I find that the Landlord has not provided sufficient evidence to support that the Tenant is responsible for extra ordinary damage to the unit, or that the damage that is present puts the Landlord's property at significant risk.

I find that the Tenant may be responsible for some damage to the rental unit; however, the damage is not significant enough to justify ending the tenancy. The Tenant should have an opportunity to repair any damage beyond normal wear and tear when the tenancy ends. The Landlord has the right to make a claim against the security deposit at the end of the tenancy and may claim for additional compensation for any cleaning, repairs, or damage or loss which exceeds the amount of the security deposit.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated May 30, 2019.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application to cancel the One Month Notice, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Landlord provided insufficient evidence to support ending the tenancy for the reasons provided within the One Month Notice.

The Tenant's application is successful. The One Month Notice issued by the Landlord dated May 30, 2019, is cancelled.

The tenancy will continue until ended in accordance with the Act.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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 17, 2019

Residential Tenancy Branch