



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties 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 parties confirmed that they had exchanged their documentation.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled? If not, should the landlord be entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee from the landlord for this application?

Background and Evidence

The landlord's agent gave the following testimony. BA testified that the tenant moved in on September 1, 2012. BA testified that the current monthly rent is \$1150.00 per month. BA testified that in July 2019 the tenant made a written request to replace his carpets, which was denied. BA testified that the tenant removed the carpets without the landlord's permission. BA testified that when the tenant moved in the carpets were new

and that they should not have required replacement unless the tenant did not regularly clean and maintain them. The landlord issued a notice to end tenancy for the following reason:

- *the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*

BA requests that the tenancy be terminated and that he is granted an order of possession.

Counsel for the tenant submits the following. Counsel submits that the tenant suffers from significant mental health issues. Counsel submits that the tenant's sister has power of attorney for him and that he is unable to fully manage on his own. Counsel submits that the tenant always has been and is still willing to cover the cost to replace the flooring to the landlords standards. Counsel submits that the tenant requested that the carpet be replaced as it had become moldy from previous water damage. Counsel submits the tenant obtained an estimate from a carpet installer as well as their opinion to support that the carpet was in need of replacement. Counsel submits that this is not a justifiable cause to end the tenancy; specifically when the tenant is willing to pay for an upgrade to meet the landlords specifications.

Analysis

When a landlord issues a notice under section 47 of the Act, they bear the responsibility to provide sufficient evidence to support the issuance of the notice.

The tenant and his counsel have made offers to the landlord to replace the flooring at the tenants expense prior to this hearing and renewed that offer during this hearing to install flooring that is suitable to the landlord and have it installed by a qualified professional. BA testified that although the tenant has offered to replace the flooring at his expense, BA is unable to accept the offer without first going through his employer.

Based on the documentation and testimony of the parties, I find that the landlord has not provided sufficient evidence to meet the definition of "extraordinary damage"; I find that removal of carpets is more properly characterized as cosmetic or decorative as opposed to structural, mechanical or electrical changes to the unit. I find that the tenant was ill advised in his actions, however, I do not find that it is sufficient cause to end the tenancy. The landlord has other remedies available to them if they so choose.

I hereby set aside the One Month Notice to End Tenancy for Cause dated August 22, 2019; it is of no effect or force. The tenancy continues. The tenant is also entitled to the recovery of the \$100.00 filing fee. The tenant is entitled to a one time rent reduction of \$100.00 for the rent due for November 2019.

Conclusion

The notice to end tenancy is cancelled, the tenancy continues.

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: October 10, 2019

Residential Tenancy Branch