



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANALAND DEVELOPMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC RP OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on December 6, 2019. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's application, and evidence. The Tenant confirmed receipt of the Landlord's evidence. Neither party took issue with the service of these documents.

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

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings, or unless the parties specifically pointed me to the evidence in their packages. As there were multiple issues on the Tenant's application, and it was unclear which evidence pertained to which issue, I reminded the parties to refer me to any evidence they wished to rely upon. I explained this was important because there were several hundred pages of evidence provided, and the initial scope of the dispute was much larger (issues were restricted to the 1-month Notice at the time of the hearing).

The parties agreed that: the Tenant moved into the rental unit in November of 2005, and she paid a security deposit of \$480.00. Current rent is set at \$1,400.00 and is due on the first of the month.

The Tenant acknowledged receiving the Notice on October 10, 2019. The Landlord issued the Notice for the following reasons:

- The Tenant or person permitted on the property by the Tenant has done extraordinary damage to the unit.

Under the details of cause section on the Notice, the Landlord stated that: as per suite inspection report on October 2, 2019, by the contractor, the Tenant damaged cabinets, counters, and fixtures which go beyond normal wear and tear, which may be due to misuse. The details of cause further state that the mold and mildew buildup are due to damaged counters and are not regularly cleaned.

During the hearing, the Landlord explained that in May of 2019, the previous building manager retired, and is no longer employed by the company. Since May 2019, the new building manager (present at the hearing) took over. The controller of the company explained that recently, (August/September 2019), the Tenant copied her on an email which complained about the continued issues with the stove and the cabinets. The controller admitted that it is not common for her to be involved in day to day issues that arise but in this case she was involved by email. The Landlord noted that there was an issue with the stove electrical connection, and with the stove itself, as it was many years old. The Landlord stated that they replaced the stove and had an electrician look at the connection a matter of days after they got the email (around September 10, 2019).

The Landlord stated that after the stove was replaced, the Tenant emailed again and complained about the fact that her cupboards were falling apart and there was stubborn mold in certain areas. The Landlord stated the Tenant sent some photos at that time, and they were shocked with the level of mold under the sink, and with the cabinet disrepair. The Landlord stated that based on the pictures they received from the Tenant when she requested repairs, and based on the suite inspection from October 2, 2019, they believe the Tenant has caused extraordinary damage to the unit. The Landlord feels this is sufficient cause to end the tenancy.

The contractor/handyman who did the suite inspection on October 2, 2019, was at the hearing and stated that he has done a couple other kitchens in the building and has never seen cabinets in such bad condition. The contractor stated that all the kitchen cabinet doors were coming apart, and the counters were in rough shape. He further stated that there was mold buildup under the sink, which seemed more than normal. The contractor opined that the rest of the suite seemed in good condition.

The controller of the company stated that the kitchen cabinets are original to the building, and that the building was constructed in 1972. She further explained that the

bathroom vanity was replaced around 15 years ago. She also stated that many other units in the building also have original cabinets and countertops, but are in much better condition.

The Tenant explained that she has lived there for over 15 years now and she mainly dealt with the previous property manager, who retired last May 2019. The Tenant stated that she has requested, on numerous occasions over the past 11 years that the Landlord come to repair the cabinets, some appliances. The Tenant provided copies of some of these requests, dating back to 2008, which show that the Tenant had identified cupboard doors falling apart nearly 11 years ago. The Tenant stated that the Landlord attended a few times over the last decade to repair the cupboard doors in the kitchen. The Tenant explained that the doors would simply fall apart shortly afterwards because the Landlord just glued them and never replaced them.

The Landlord stated that they could not find the records associated with these requests but the Tenant expressed that this is because it was with the previous property manager who has since left. The Tenant stated that after many years of filing complaints about the repairs needed in her unit, the previous manager told her to stop contacting her, which is when the Tenant stated she started to cc the head office with her emails. The Tenant stated, and provided evidence to support, that she had a cleaner come regularly, and she did her best to clean and maintain.

The Tenant stated that there have been several leaks in the area under the kitchen sink, which have not been her fault. The Landlord explained that there was a leak 12 years ago, where the Tenant left the sink running and flooded the cabinet with water. The Tenant explained that this was an isolated incident nearly 12 years ago and the mold buildup is a result of the sink not functioning correctly, and the old counters and cabinets. The Tenant provided multiple photos over the years showing that there has always been some decay/mold present, and that it is largely due to the particle board substrate and the age of the cabinets. The Landlord pointed to some mold on the caulking around the sink but was unclear about how old this caulking was.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid.

I turn to the following section of the *Act*:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

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

Next, I turn the following definition of “extraordinary” from Black’s Law Dictionary:

EXTRAORDINARY - Out of the ordinary; exceeding the usual, average, or normal measure or degree.

I note the Landlord has provided several hundreds of pages of evidence, but made little effort to point out the pertinence or relevance to most of these documents. I note the Landlord, and in particular the head office/controller, became aware of multiple issues with the rental unit when the Tenant advanced and escalated her requests for repairs due to the ongoing issues with her cabinets, the counters, and some disintegrating, moldy parts in and around the sink. I note the Landlord took steps to repair the stove, as requested by the Tenant, as there were clear electrical safety concerns. This was done in a timely manner, once the request was made and the head office became aware of the issue. However, I note this was not the only issue raised by the Tenant.

The Landlord appears to be shocked at the state of repair of the cabinets, and the fact there is some mold under the sink and around the counter areas. This was the focus of the Landlord’s testimony and their main issue behind the Notice. I note the Landlord has pointed out that other units in the building also have original cabinets and counters, but are not falling apart like this.

I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which states as follows:

This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

This policy guideline indicates that the useful life for counters and cabinets is 25 years, and faucets are 15 years. Although this is a general guideline, typically used when determining amounts awarded for damages items, I find it helpful on this matter to highlight that the cabinets, and counters are almost at double their useful life expectancy. Not all items are listed in this policy guideline. However, it appears many of the problematic items are well beyond their useful life expectancy, and as per the documentary evidence provided by the Tenant, have been falling apart for quite some time. The Landlord stated they were not made aware of all of the issues the Tenant says she raised. However, I note the previous building manager was the one the Tenant was dealing with, largely, and she has since retired. As such, the Landlord was unable to speak directly to the history of issues.

In contrast, the Tenant was able to show that there have been many ongoing issues with the cabinets, the counters, and some mold. These are the issues which form the bulk of the basis for the Landlord's Notice to End Tenancy for Cause (for extraordinary damage). It appears the Landlord has made fixes to cabinets, and was made aware over the years with respect to the disrepair of some of the aging building elements. There are letters provided into evidence showing the Tenant was in communication with the previous manager about having some of the matter addressed, some of which were.

After considering the age of the items, the well documented history of disrepair, and poor repair jobs, I do not find the situation at hand amounts to extraordinary damage such that it entitles the Landlord to end the tenancy. It appears the degradation has been happening for multiple years, on multiple items which are beyond their useful life expectancy. I also do not find the mold that is present is extraordinary, such that it warrants an end to the tenancy. It appears the mold issue may be exacerbated by the age and condition of the cabinets, and the counter areas.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, I cancel the Notice.

The Tenant's application is successful. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice from October 2019 is cancelled.

The tenancy will continue until 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: December 6, 2019

Residential Tenancy Branch