



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, RR, RP, FFT

Introduction

On September 20, 2019, the Tenants 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 September 12, 2019 (“the One Month Notice”). The Tenants also applied for an order for the Landlord to provide services or facilities required by law; to deduct the cost of services or facilities from the rent; to make repairs to the unit; for the Landlord to comply with the Act, Regulation, or tenancy agreement; and to recover the filing fee for the Application.

The matter was set as a teleconference hearing. The Landlord and Tenants 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 permit 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 hearing proceeded based on the Tenants request to cancel the One Month Notice to End Tenancy for Cause. The remainder of the Tenants' 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 September 1, 2009, on a month to month basis. Rent in the amount of \$1,215.96 is due by the first day of each month. The Tenants paid the Landlord a security deposit of \$550.00.

The Landlord served the One Month Notice to the Tenants by posting the Notice to the door on September 12, 2019. The Notice has an effective date (the date the Tenant must move out) of October 31, 2019.

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

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

- *Damage the Landlord's property.*

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

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 Tenants disputed the One Month Notice on September 20, 2019 within the required time period.

The Landlord provided affirmed testimony that the Tenants were involved in illegal activity by parking a camper on the road and due to growing cannabis on the rental; property.

The Landlord testified that the Tenants are in violation of a bylaws regarding the parking of the camper. The Landlord testified that the camper is not insured. The Landlord provided a copy of a letter dated February 9, 2018, from the city regarding complaints about the parking of vehicles on the street and boulevard at the rental unit. The letter directs the Landlord to bring the vehicles into compliance by February 19, 2018 or face legal action including fines.

The Landlord testified that another occupant of the rental property reported that the Tenants were growing cannabis plants on the property. The Landlord testified that she did not observe any cannabis plants on the property, and she did not speak to the Tenants about the reported plants. The Landlord testified that there is no term or condition within the tenancy agreement regarding growing cannabis. The Landlord did not provide any documentary evidence stating that growing cannabis is illegal.

The Landlord testified that the Tenants are responsible for causing extraordinary damage to the rental unit. The Landlord testified that there were some holes in the floor of the rental unit that were caused by normal wear and tear. She testified that she told the Tenant that she would be getting new flooring. In September 2019, the Landlord noticed that the holes in the floor off the rental unit were bigger. The Landlord provided a photograph of a hole in the flooring.

The Landlord testified that the Tenants were responsible for some flooding in the kitchen that occurred a few years ago and caused damage to the rental unit below.

The Landlord testified that last winter a tap located outside of the rental unit burst and caused flooding to the area under the deck. The Landlord testified that the Tenants had failed to turn off the water to the tap. The Landlord provided a photograph of a tap.

The Landlord testified that the Tenants are responsible for a problem with rats on the rental property. The Landlord testified that the rats are attracted to boxes that the Tenants are storing under the deck.

The Landlord testified that the Tenants are responsible for causing damage and mould to the area around and below the kitchen sink. The Landlord testified that the counter has separated from the backsplash allowing water ingress and mould growth. Then Landlord testified that the Tenants never notified her about the issue. The Landlord provided photographs of the kitchen area including the sink and cabinet area above and below the sink. The Landlord provided copies of reports from an insurance company

that indicates that the kitchen counter top laminate and backsplash are rotted due to water ingress from the faucet or water shut off.

In response to the Landlord's testimony, the Tenants provided the following testimony:

The Tenants provided a photograph showing holes in the kitchen floor and which indicates the holes have been present for four years.

The Tenants testified that parking of the camper was permitted at the start of the tenancy. The Tenant testified that he put a licence on it and has made arrangement to have it moved.

With respect to the allegation that they were growing cannabis, the Tenant submitted that the Landlord has been on the property a dozen times since June 2019 and never observed any cannabis. The Tenant testified that there are no cannabis plants on the rental property or inside the house. The Tenant testified that the breakers trip because there are two rental units sharing 100-amp service.

With respect to rats, the Tenants testified that there is a storage area under the back deck that is insulated and covered by sheetrock. The rats have made a home in the walls and insulation. The Tenants submit that they informed the Landlord of the problem and asked the Landlord to deal with the issue. The Tenants submitted that the storage room is for storage of things that are not used every day. They submitted that the rodents are getting into the storage area due to the cement floor separating from the building.

The Tenants submitted that water damage under the deck was caused by a faucet that was installed by the Landlord's brother that did not include a shut off valve located inside the building. They submitted that water damage caused by the freezing and ruptured valve is not the Tenants' responsibility.

The Tenants testified that when they moved into the rental unit, they notice that the particle board cabinet at the back of the sink was wet and was poorly caulked / sealed. The Tenants testified that they mentioned the issue to the Landlord on numerous occasions. They testified that water would travel behind the sink. The Tenants testified that the Landlord promised them a new countertop, faucet, and drain.

In reply, the Landlord testified that the Tenants did not mention it, but she noticed the problem a few years ago and the Tenants said that they would fix the problem.

Analysis

In the matter before me, the Landlord has the burden to prove there are sufficient reasons for ending the tenancy. Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord has not provided sufficient evidence that the Tenants have engaged in illegal activity that has or is likely to damage the Landlord's property. The Landlord has not provided sufficient evidence that the parking of the camper is damaging her property. In addition, the Landlord did not observe any cannabis plants on the rental property and did not provide any proof that growing cannabis is illegal activity.

With respect to extraordinary damage to the rental unit, I find that the flooding occurred years ago, and the Landlord did not take any action to end the tenancy at that time. If the Tenants were responsible for causing extraordinary damage to the unit due to their negligence, I would expect that the Landlord would have taken steps to end the tenancy years ago. The Landlord took no action and the tenancy continued.

In addition, the Landlord acknowledged that there were holes in the floor of the rental unit that were caused by normal wear and tear and that she told the Tenants that she would be getting new flooring. I find that if the holes were getting larger, it is a symptom of problem with the flooring or sub-floor and this is not extraordinary damage caused by the Tenants.

Furthermore, the Landlord has not provided sufficient evidence to prove that the Tenants are responsible for the pipe that froze and burst under the deck and caused flooding, or that the Tenants are responsible for attracting rodents into the rental unit or property. A Landlord is responsible for repairing major leaks in pipes. A Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a Tenant.

I find that it is not unreasonable that the Tenants were storing items in the storage room under the deck. There is insufficient evidence that the Tenants attracted the rodents by

doing something negligent or that the rodents caused extraordinary damage to the rental property.

With respect to the kitchen sink, I find that the Landlord has been aware of the water damage to the area around the sink for a few years. It is unclear whether the damage was caused by a leaking faucet, normal wear and tear, or by the Tenants failing to deal with pooling water. Nevertheless, I find that the cabinets are at least 10 years old and damage to this area has occurred over time. I find that this is not a situation where the Tenants have caused extraordinary damage to the kitchen sink cabinet to a degree where the tenancy should end.

After careful consideration of the evidence before me, I find that the Landlord has not provided sufficient evidence that the tenancy must end due to the Tenants causing extraordinary damage to the rental unit.

The Tenants' application to cancel the One Month Notice is successful; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated September 12, 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 Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated September 12, 2019, is cancelled.

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

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

The Tenants have leave to reapply for dispute resolution to pursue the issues that were severed from this hearing.

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 03, 2019

Residential Tenancy Branch