



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

The landlord's manager and assistant manager attended the hearing. Tenant T.D. and his advocate also attended the hearing. Each were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was served with the tenant's application via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2007 and is currently ongoing. Monthly rent in the amount of \$952.00 is payable on the first day of each month. A security deposit of \$405.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The manager testified that a One Month Notice to End Tenancy for Cause with an effective date of September 30, 2020 (the "One Month Notice") was posted on the tenants' door on July 16, 2020. Tenant T.D. confirmed receipt of the One Month Notice on July 17, 2020.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the 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 or property/park.

The manager testified that the first of the above reasons to end the tenancy regarding an illegal activity was checked off in error. The manager testified that the landlord is not alleging that the tenants have engaged in an illegal activity.

The One Month Notice states the following details of cause:

Tenants have been requested after suite inspections to clean up. Suite not in an reasonable sanitary and cleanliness standards [sic]. Drapes are destroyed from cig smoke.

Flood in suite my carpet guys came to extract they would not enter. Maintenance was called as water was dripping into the bathroom below. Again could not fix the problem til [sic] the washroom was cleaned.

The manager testified that annual suite inspections are conducted for all of the suites in the subject rental building and that when the tenants know the inspections are coming the suites are in pretty good condition but when you come back, they are dirty, cluttered and smelly.

The manager testified that the subject rental property is filthy and smelly, and the bathroom covered in grime and urine. The manager testified that the drapes will have to be replaced as will the appliances and carpet because it is not possible to get the nicotine stains out, which are caused by the tenants' smoking. The manager testified that she did not know how old the appliances are. The manager testified that the walls all need to be cleaned and then re-painted.

The manager testified that the tenants have not met the cleanliness standards as set out in section 8 of the tenancy agreement. Section 8(a) of the tenancy agreement states:

The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for reasonable wear and tear to the residential property.

The manager testified that there was a water leak in the subject rental property for which the tenant was not responsible. The manager testified that the tenants were aggressive and did not allow maintenance personnel access to their suite. The manager entered into evidence an invoice from the maintenance person which states:

Water damage call out to suites flooded by [the subject rental property]- service call to site- on site 8:00 PM [subject rental property]- inspection- very aggressive renter [T.D.] very messy suite- did not want anyone in- extracted water from common hall on 1st floor and set up fan to dry out.

Tenant T.D. testified that he was afraid of people entering his suite due to COVID 19 and his health concerns. Tenant T.D. testified that the maintenance people left the drying equipment with him and he set it up and cleaned the suite and allowed access the following day.

The manager did not testify to any physical damages arising out of the tenant's delay in providing access.

Both parties agree that the landlord has sent several letters over the course of this tenancy asking the tenants to clean up the subject rental property and that the tenants comply and then the property returns to an unclean state. Tenant T.D. testified that he is disabled and finds it difficult to clean.

Both parties agree that the tenants are permitted to smoke in their unit. The manager testified that the tenant throws cigarette butts out of a bedroom window, the tenant's advocate submitted that the tenants do not throw their cigarette butts out the window and use ashtrays inside the subject rental property. The advocate submitted that the butts are collected by the tenants and recycled. Photographs of full ashtrays were entered into evidence.

The manager entered into evidence witness statements stating that the tenants throw their cigarette butts out the window.

The tenants' advocate made the following submissions:

- while the subject rental property is not clean and tidy, the landlord has not proved that the tenants have caused extraordinary damage;
- as per Residential Policy Guideline 1, reasonable wear and tear refers to "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion". The tenants are permitted to smoke in the subject rental property, therefore smoking inside the property is using the premises in a reasonable fashion.
- Deterioration that occurs due to smoking inside the unit falls under reasonable wear and tear as per the policy guideline. The results of smoking inside, an activity they were always allowed to do for the duration of their tenancy, is not extraordinary damage to the unit worthy of eviction.
- The tenants have been living in the unit for 13 years. As such, the damage that the landlord alleges to the unit is likely due to a combination of age and reasonable wear and tear. Residential Policy Guideline 40 sets out the useful lifespan for various elements of rental properties. The term "useful lifespan" refers to how long a certain element lasts before it usually needs replacing. According to the guideline, interior painting has a useful life of 4 years, curtains have a useful lifespan of 10 years, a dishwasher has a useful lifespan of 10 years, and a refrigerator and a stove have useful lifespans of 15 years. The

tenants have already been living in the unit for 13 years and the unit was not brand new when they moved in.

Analysis

I find that service of the One Month Notice was effected on the tenants on July 17, 2020, in accordance with section 88 of the *Act*. I find that the One Month Notice meets the form and content requirements of section 52 of the *Act*.

Section 47(1)(f) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

Section 52(d) of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must state the grounds for ending the tenancy.

I find that the One Month Notice states the grounds for ending this tenancy; however, those grounds do not include throwing cigarette butts out the window. I therefore will not consider submissions on this allegation in determining whether the landlord is entitled to an Order of Possession under section 47 of the *Act*.

Extraordinary damage is not defined by the *Act* but implies damage over and above reasonable wear and tear and moderate damage to a property. I find that the tenants smoking, and lack of cleaning has caused some degree of damage to the subject rental property; however, I find that the damage caused is not extraordinary in nature. In coming to this determination, I have considered all the evidence before me. I note that most of the items listed as damaged by the manager have either already passed their useful life or will soon. I find that the manager has not proved a monetary loss, let alone a monetary loss that would qualify as extraordinary. I therefore find that the One Month Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the *Act*.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy will continue 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: August 28, 2020

Residential Tenancy Branch