



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 03, 2020 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated June 30, 2020 (the “Notice”).

The Tenant and Landlords appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, are the Landlords entitled to an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlords, H.H. and the Tenant. The tenancy started December 01, 2014 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent was

\$1,400.00 per month. The Tenant testified that rent is due on the first day of each month. The tenants paid a \$700.00 security deposit. The written agreement is signed by the Landlords but not the tenants.

The Landlord testified that the written agreement submitted is wrong as there was only one agreement between the Landlords, the Tenant and the Tenant's wife, H.B. The Landlord testified that the agreement is otherwise accurate.

The Tenant testified that the written agreement submitted is accurate although the Tenant did say he thought the agreement was between the Landlords, him and his wife, H.B. The Tenant testified that a new tenancy agreement was done with him and his daughter, H.H., as tenants and this is what was submitted.

The Landlord testified that only one tenancy agreement was done between the parties.

The Landlord submitted that H.H. is an occupant. The Tenant submitted that H.H. is a tenant and relied on the written tenancy agreement submitted.

J.S. was originally named as a tenant on the Application. Both parties agreed J.S. is an occupant and not a tenant.

The Notice was submitted as evidence. It is addressed to the Tenant and H.H. and refers to the rental unit. It is signed and dated by the Landlords. It has an effective date of July 31, 2020. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit or property.
2. Tenant has not done required repairs of damage to the unit or property.

The parties agreed the Notice was served on the Tenant in person June 30, 2020.

I told the Landlords at the outset that the grounds for the Notice relate to damage so to focus on damage in their submissions.

The Landlord testified as follows in relation to the grounds for the Notice.

There has been damage to the carpet downstairs from feces being left there for a while. This damage has not been repaired or addressed by the Tenant.

There are holes in the walls of the rental unit.

There is pet damage on the landing wall where the drywall has been scratched down. She does not believe the Tenant's photos show this damage has been fixed as it looks like a coat of paint has just been put over the damage. She has not seen this wall in person since anything was done to it by the Tenant.

The carpet in the second bedroom has been damaged.

The front door and patio screen have been damaged and not repaired or addressed by the Tenant.

The deck has holes in it which have not been repaired or addressed by the Tenant.

The ceiling in the upstairs and downstairs bathrooms as well as the porch ceiling have been damaged. She does not know what the damage is from. She does not believe it is water damage.

The Tenant damaged an inner door. It shows in the Tenant's photos that this has been replaced.

Landlord M.S. testified that the lower bathroom is below the upstairs bathroom but that the porch is not near the bathrooms.

The Landlords submitted letters to the Tenant about cleaning and doing repairs as well as photos of the rental unit.

The Tenant testified as follows in relation to the grounds for the Notice.

The photos show the master bedroom door was replaced.

The photos show a hole in the wall of the rental unit has been plastered.

The photos show the wall in the entry with the pet damage has been plastered. It is not accurate that the photos show the damage has been covered by a coat of paint.

The damage to the bathrooms and porch ceiling is from a water leak. The roof leaked prior to 2016. The upstairs bathroom is directly above the lower bathroom. The water leaked into the porch roof which is right outside the bathroom window. The Landlords

put a new roof on last year. He told the Landlords about the roof leak. Landlord M.S. and a roofer came out to the rental unit to check it and said it needed a new roof. The person who did the roof was going to fix the plaster in the rental unit but never did. The Landlords said this person would fix the drywall, but he never came back.

The basement carpet is stained but this is from the sump pump failing. He replaced the sump pump.

The metal panel on the front door was damaged due to the wind catching it.

There were two small holes on the deck when the Tenant moved in. The holes have gotten bigger over time from water getting in them and freezing.

After speaking to H.H., the Tenant said the roof was replaced in 2016.

The Tenant submitted photos of the drywall damage, a wall in the rental unit that has been filled and sanded, a hole in the drywall that has been filled, a new bedroom door and a letter from the Landlords.

In reply, Landlord M.S. testified as follows in relation to the roof leak. The roof was replaced in 2017. The Tenant told him the roof has started to leak. The Tenant told him there was a minor leak into the bathroom.

I asked Landlord M.S. if he attended the rental unit and looked at it when the Tenant told him about the leak. Landlord M.S. said he did not because he thought the job was done.

The Landlord testified that the basement carpet that has been damaged is in a different area than the sump pump.

Analysis

I find the tenancy agreement is between the Landlords, the Tenant and H.B. The written agreement submitted has clearly been altered in relation to the second tenant's last name. I do not accept that the tenancy agreement originally named H.H. given this. I find it more likely that it named H.B. and was changed to name H.H. I am not satisfied this change was agreed to by the parties given the change is not initialled.

Given I do not accept H.H. is named on the tenancy agreement, I am not satisfied H.H. is a tenant. I find H.H. and J.S. are occupants with no rights or obligations under the tenancy agreement. Therefore, I have removed both H.H. and J.S. from the Application and this is reflected in the style of cause.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlords who have the onus to prove the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Notice was issued pursuant to sections 47(1)(f) and (d) of the *Residential Tenancy Act* (the “Act”) which state:

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;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time...

(emphasis added)

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*.

There is no issue the Tenant received the Notice June 30, 2020. The Application was filed July 03, 2020, within time.

The photos show the rental unit is not clean and has many belongings and boxes in the rooms. However, the grounds for the Notice relate to damage, not cleanliness. The Landlords cannot end the tenancy under the grounds noted based on the rental unit not being clean or having numerous belongings and boxes in the rooms. The Landlords must prove damage.

In relation to section 47(1)(f) of the *Act*, the Landlords must prove extraordinary damage. This is a high threshold.

I have reviewed the photos submitted. I am satisfied based on the Tenant's photos that the scratches on the wall beside the stairwell have been filled. I am satisfied the hole in the wall near the kitchen has been filled. I am satisfied the door with the large hole in it has been replaced.

I am satisfied based on the Landlords' photos that there are holes in the drywall in the bathrooms and porch ceiling. The Tenant testified that these were caused by a leak in the roof which the Landlords were advised of. I am satisfied the Landlords were advised of the leak as Landlord M.S. acknowledged that the Tenant told him about the leak. Landlord M.S. also acknowledged that the Landlords did not attend the rental unit when the leak was reported. In the circumstances, I am not satisfied the Tenant or occupants damaged the rental unit by putting holes in the drywall. I do not find this more likely than the Tenant's version of events based on the evidence provided. I therefore do not uphold the Notice based on extraordinary damage in relation to the holes in the drywall.

A photo shows an issue with cleanliness of the carpet in the basement. The photo shows a small portion of the carpet. The parties provided conflicting testimony about the cause of the issue. When I consider the photo, which appears to show the state of the carpet prior to any cleaning, I am not satisfied the carpet is damaged to an extent that amounts to extraordinary damage which should result in the tenancy ending. I also note that, from the Landlords' photos, it appears the carpet in the basement is just a piece of carpet placed on a hardwood floor and is not the permanent flooring. It appears to be the equivalent of a large area rug. I find the issue less serious than if the carpet was permanent flooring.

A photo shows the carpet in one of the bedrooms is dirty. The photo shows a small portion of the carpet. Again, the photo appears to be taken prior to any cleaning being done. I am not satisfied based on the photo that the carpet is damaged to an extent that amounts to extraordinary damage which should result in the tenancy ending.

The remainder of the damage shown in the photos is not serious enough to meet the level of extraordinary damage.

I am not satisfied based on the evidence provided that the Tenant or occupants have caused extraordinary damage to the rental unit. I find this because I find the main issue is cleanliness and because "extraordinary damage" is a high threshold.

In relation to section 47(1)(g) of the *Act*, in my view, the first step for a landlord to address needed repairs is to request in writing that a tenant make the repairs within a reasonable period.

I have reviewed the April 28, 2020 letter from the Landlord to the Tenant submitted. It does not relate to repairs.

I have reviewed the May 04, 2020 letter from the Landlords to the Tenant submitted. It only relates to cleaning, not to repairing damage.

I have reviewed the June 14, 2020 letter from the Landlords to the Tenant. In relation to damage, it states:

We have also found in our weekly inspections damages of walls, doors, ceilings, floor and patio that you have done that we will require to be repairs.

I am satisfied that the photos show the following damage in the rental unit:

- Large holes in the drywall of walls and the porch ceiling
- Scratches to the wall by the stairwell
- Hole in the wall by the kitchen
- Hole in a door
- Hole or rip in the flooring on the deck
- Damage to a screen door
- Damage to a purple wall by a doorway

In relation to the large holes in the drywall of walls and the porch ceiling, I am not satisfied the Tenant was responsible for repairing this damage given my findings outlined above.

I am satisfied the Tenant has partially addressed the scratches to the wall by the stairwell based on the photos.

I am satisfied the Tenant has partially addressed the hole in the wall by the kitchen based on the photos.

I am satisfied the Tenant has addressed the hole in the door based on the photos.

In relation to the hole or rip in the flooring on the deck, the Tenant testified that there was a small hole at the start of the tenancy that has gotten bigger due to rain and freezing. The Landlords submitted photos that appear to be of the rental unit prior to the tenancy. I do not find the photos to be sufficient to show the state of the deck at the start of the tenancy. I would expect to see a Condition Inspection Report to show the state of the deck at the start of the tenancy. The Landlords have not submitted a Condition Inspection Report or similar compelling evidence to show the state of the deck at the start of the tenancy. In the circumstances, I am not satisfied based on the evidence provided that the Tenant or occupants caused the damage to the deck.

In relation to the damage to a screen door, the Tenant testified that the wind caught the door and caused this. I am not satisfied based on the evidence provided by the Landlords that the Tenant or occupants caused the damage by their actions or neglect. Therefore, I am not satisfied the Tenant was responsible for repairing the damage.

In relation to the damage to a purple wall by a doorway, I make the same comments as above in relation to the deck. I would expect to see a Condition Inspection Report to show the state of the walls in this room at the start of the tenancy. The Landlords have not submitted a Condition Inspection Report or similar compelling evidence to show the state of the walls in this room at the start of the tenancy. In the circumstances, I am not satisfied based on the evidence provided that the Tenant or occupants caused the damage to the wall or were responsible for repairing it.

Given the above, I find the Tenant has partially addressed the scratches to the wall by the stairwell and hole in the wall by the kitchen. I note that the letter requiring repairs was dated June 14, 2020 and the Notice was issued June 30, 2020. I do not find 16 days to repair the holes to be "within a reasonable time" given the nature of the damage. Given this, and given the Tenant has partially addressed the repairs, I do not uphold the Notice based on these two issues alone. I also note that I do not find these two issues serious.

In the circumstances, I am not satisfied based on the evidence provided by the Landlords that they had grounds to issue the Notice. Therefore, I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

I do note the following. I found this to be a close case. The Tenant is responsible for the following pursuant to section 32 of the *Act*:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I agree that the rental unit is not clean and put the Tenant on notice that it may be that the Landlords can end the tenancy under a different section of section 47 of the *Act* if the rental unit remains in the state shown in the photos. I also note that the Tenant can be held financially responsible for damage to the rental unit that is caused by the actions or neglect of the Tenant or occupants and is beyond reasonable wear and tear.

Conclusion

The Notice 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 *Act*.

Dated: August 12, 2020

Residential Tenancy Branch