



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 concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause.

Both tenants and both landlords attended the hearing and the tenants were accompanied by an Advocate. Both landlords and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The first landlord (DG) testified that this month-to-month tenancy began on January 1, 2020 and the tenants still reside in the rental unit. Rent in the amount of \$1,800.00 is payable on the 1st day of each month, and are currently in arrears of rent in the amount of \$5,400.00 for July, August and September, 2021. On December 24, 2019 the landlords collected a security deposit from the tenants in the amount of \$900.00 as well as a pet damage deposit in the amount of \$300.00, both of which are still held in trust by

the landlords. The rental unit is a 1914 heritage building with 12 units, and the tenants reside on the top floor. The landlords do not reside on the rental property.

The landlord further testified that on May 18, 2021 the landlord served a One Month Notice to End Tenancy for Cause by taping it to the door of the rental unit. A copy has been provided for this hearing and it is dated May 18, 2021 and contains an effective date of vacancy of June 30, 2021. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk.

The tenants have over-flowed the bathtub 5 times, running water into another suite below into light fixtures, walls and ceiling. The landlord went to the rental unit to inspect 3 times, but the tenants would not allow the landlords in. On the 4th occasion, the tenants allowed the landlords in, on March 16, 2021, and the tenant showed the landlords how the tub is filled. The landlord put down blue paper under the clawfoot tub to see if there was any leakage, and there was none. The tenant put electrical tape on the overflow and filled the tub beyond the overflow and beyond the taps which compromised the tub and the overflow. Since then, the tenants have paced silicone on the overflow and the taps. The landlords had to have the drywall and insulation in the lower suite repaired. The tenants promised to not do that again, but did so on May 18, 2021.

On April 30, 2021 the tenant in the suite below moved out due to interruptions and damage to that suite. The last time it happened, water went into the kitchen of that unit as well as the bathroom.

The second landlord (GG) testified that using light blue paper is something that he learned about when he was a maintenance person for low cost housing, and the paper turns a darker color when wet.

When the tenants finally allowed the landlords in on the fourth try, no leaks were apparent until the water was above the overflow. The taps don't need to be sealed because they are above the overflow. Now, since the tenants have applied silicone and electrical tape, if water overflows and no one is home, it will continue to run over the tub. Video evidence and photographs have also been provided for this hearing.

The tenants have put a locked chain on the inside of the door, and wouldn't allow the landlords in; the door was barricaded until the fourth time the landlords attended and were allowed in by the tenants.

The landlord has seen the video provided by the tenants, however the landlord believes it is staged; the tenants claim the water is coming from the plumbing but the landlords went in again in August and there was still no leakage.

The tenant testified that the landlords never asked the tenants if they flooded the tub, but assumed that the tenants had and proceeded as though the tenants had overflowed the tub. The first time was during a heavy rain, and an open atrium leaked 10 years ago. The tenants have never overflowed the tub but are very committed to keeping the home in good order.

The tenant has PTSD, and the downstairs tenant banged on the door, so the tenant's roommate sent the landlords a video to show that there was no wetness.

The first time the landlords attended, the tenant was in bed with COVID-19 and could not allow them in. On March 16, 2021 the tenant was able to greet the landlords, which is when the landlord put down the blue paper. However the pipe has an L joint to the floor in the overflow and the pipe is cracked. Sometimes bath water will go onto the floor; not for every bath, but depending on how full the tub is. The tenant suffered pelvic injuries and needs to fill the bathtub over that level, so the tenant applied silicone over the hole inside the tub in order to stop the leak. The tenant is capable of making amateur repairs.

The tenant also testified that the tenants believe that water leaks during heavy rain which enters into the rental unit and the suite below. There have not been any professionals to assess the damage in the rental unit, and the tenants have not noticed any damage to the walls from roof leakage. The tenants respect that the rental unit is the landlords' property, but the landlords do not respect that the rental unit is the tenants' home.

The tenant thought it would be okay to fill the tub only half way, but found it too painful. There was a heavy rain on May 18, 2021 and the tenant put on more silicone, and the landlords were there a few weeks ago, and there are no more leaks.

SUBMISSIONS OF THE LANDLORDS:

There was a leak in that bathroom 10 years ago which was repaired and the roof has never leaked. BC weather website shows that there was no more than .2 ml of rain during

that time. The night that the landlords attended the rental unit, the tub was filled above the overflow, and when filled to the bottom of the overflow, that is where the tenant says it is only half full. When the water got to the taps, it started to leak. Silicone is not a repair; it's doing damage and will take hours to fix it. The tenants have disturbed 4 other suites, and the landlord has lost a good tenant who resided in the unit below.

SUBMISSIONS OF THE TENANTS' ADVOCATE:

The landlord claims that the tenants have flooded the tub on 5 occasions, which was initially suggested by tenants in the lower level on the first occasion. The landlord has stuck to that claim throughout regardless of the tenants providing evidence to the contrary and advised the landlord of a leak to tub and around faucet and base around the drain. Video evidence of the leak was provided, and the tenants requested repairs such as silicone around drain and taps and overflow which are the 3 points of leakage. The landlords made no attempt to get a plumber or professional to assess plumbing, and no repairs were made despite requests. The only solution offered is for the tenants to only fill the tub half full on May 16, which they cannot do due to disabilities. They cannot use the shower and cannot bathe in half a tub of water; it's too painful. The tenants have mitigated by placing towels down under the tub, made the silicone repairs and there have been no further issues or flooding. The landlords have mentioned evidence of a blue drop-sheet, but only after the tenants made repairs to the tub. There have been no further issues or flooding. At the first instance the tenants told the landlords that they would not be home and gave a different time for the landlords to enter the rental unit.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have reviewed all of the evidentiary material, including the videos. In the first video provided by the landlords, there is no leak and the landlord can be heard telling the tenant that as long as the water level is below the overflow, it won't leak. The second video provided by the landlords, dated March 16, 2021 shows leakage and bubbling in the walls of the suite below the tenants' rental unit. The third video provided by the landlords is a better picture of the bathtub, showing silicone placed on the taps and the overflow.

The landlord testified that the tenant put the electrical tape on the overflow and filled the tub beyond the overflow and beyond the taps which compromised the tub and the overflow, and that since then, the tenants have paced silicone on the overflow and the taps.

The first video provided by the tenants shows a leak somewhere, but is not clear enough to determine where the leak comes from. The second video of the tenants shows a leak that appears to be in a joint on a pipe. The third video of the tenants show similar evidence, but none of the videos indicate whether or not the bathtub was full or empty. The video marked October 2020 shows no leakage under the bathroom sink; no water under the bathtub but a stain or discoloration in the floor. When the water is running into the drain in the video, no water leaks and no wetness appears under the tub or near the toilet. The tenant can be heard saying that there have been no leakages.

I have also reviewed the letter from the tenants to the landlords dated May 21, 2021 stating that it isn't possible, due to pain, to bathe using the level of water that the landlords had asked the tenants to do in order to avoid the hole, and "...in other words to make sure that the built in overflow drain is never used." It also states that the tenants applied some sealing material to the inside of the tub leading to the overflow drain pipe that leaks, and the hole in the structure still leaks during bathing. The letter suggests that water may be leaking out around the drain area at the bottom of the tub, and that the tenants consulted a plumber who says that it sounds like there is too much water pressure for an old drain connection at the bottom of the bath and it needs replacing. The letter asks that the landlords correspond and schedule a repair by June 15, and seeks an agreement for monetary compensation and for an alternate place of residence during repairs.

The landlords contend that the videos of the tenants showing leaking under the tub are staged. Certainly the tenants' video does not indicate that the tub was full during the taking of the video that shows leakage.

A landlord has a right and an obligation to protect his or her property. I find that the tenants have caused leakage by filling the tub over the overflow and the taps, and the landlords have established cause to issue the Notice. Therefore, I dismiss the tenants' application.

The Act also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in

the approved form, I grant an Order of Possession in favour of the landlords. Since the effective date of vacancy contained in the notice has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

This order is final and binding and may be enforced.

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: September 16, 2021

Residential Tenancy Branch