



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, CNC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 7, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy for Cause dated January 29, 2022 ("the One Month Notice");
- an order for regular repairs;
- an order for the landlord to comply with the *Act*;
- an order granting the recovery of the filing fee.

The Tenants, the Tenants' Advocates M.M. and N.S., as well as the Landlord's Agents J.W. and L.M. attended the hearing at the appointed date and time and provided affirmed testimony. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find that the above-mentioned documents were sufficient served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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.

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 and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary 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 issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement or the *Act*. The Tenants' request for an order for regular repairs and an order for the landlord to comply with the *Act* are dismissed with leave the reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on February 7, 2010. Currently, the Tenants pay rent in the amount of \$1,301.36 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$507.50, which the Landlord continues to hold.

The Landlord's Agents stated that they served the Tenants in person with the One Month Notice on January 29, 2022. The One Month Notice is dated January 29, 2022 and has an effective date of February 28, 2022. The Tenants confirmed having received the One Month Notice on the same date. The Landlord's reasons for ending the tenancy on the One Month Notice are;

“The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

“The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the landlords property at significant risk”

“Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit.”

“Tenant has not done required repairs of damage to the unit”

The parties agreed that the Tenants' bathroom had an accumulation of mould growth which required remediation. Both parties provided inspection reports and quotes to complete such remediation to the Tenants' bathroom. The scope of the work required to remediate the mould growth varied from vigorous cleaning to complete renovation. Both parties provided pictures in support of the damage to paint, grout, drywall and mould. The parties agreed that the Landlord has since completed a full remediation of the bathroom.

The Landlord's Agents stated they conducted an inspection of the rental unit on December 16, 2021 at which point it was found that that the Tenants had severely neglected their bathroom and did not report any issues relating to mould growth and damage to the Landlord. The Landlord's Agents stated that the Tenants had also damaged their vanity light fixture and had a large amount of possession in their rental unit, which made it difficult to complete a throughout inspection. Lastly, the Tenants had installed a washing machine in their rental which is not permitted and may have contributed to the moisture issue.

The Landlord's Agents stated that the Tenants were subsequently served with a breach letter outlining the above-mentioned issues. The Landlord's Agents stated that the Tenants have created an unsafe living condition that extends beyond reasonable wear and tear. The Landlord's Agents stated that the Tenants are not accepting responsibility and refuse to pay for the remediation costs.

The Tenants stated that the mould growth was apparent to them dating back to 2013 at which time they verbally notified the previous Landlord, who did not take any action to remediate the mould growth. The Tenants stated that the current Landlord has not

conducted any inspections in the rental unit in over 7 years, therefore, have not mitigated their loss by addressing the mould growth issue sooner.

The Tenants stated that they have maintained a reasonable level of cleanliness in their rental unit throughout their tenancy. The Tenants stated that they employed the services of a certified mould inspection company and provided their assessment in support. The Tenants stated that the results indicate that a full demolition of the bathroom was not required and that the potential cause of the mould issue could relate to the extractor fan being inadequate. As such, the Tenants feel as though they are not responsible for the damage found in the bathroom.

The Tenants stated that other units in the building are experiencing the same issues with moisture damage in the bathrooms. The Tenants provided a written statement from another occupant as well as pictures of a different bathroom showing signs of similar moisture damage. The Tenants stated that they have addressed all the issues raised by the Landlord in their breach letter by December 29, 2021.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that

- (a)complies with the health, safety and housing standards required by law, and
- (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(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.

(4)A tenant is not required to make repairs for reasonable wear and tear.

(5)A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

According to the Residential Tenancy Branch Policy Guideline #1;

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenants in person with a One Month Notice to End Tenancy for Cause on January 29, 2022 with an effective vacancy date of February 28, 2022. The Tenants confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, I find that the Tenants have not maintained a reasonable cleanliness and sanitary standard in their bathroom during the tenancy in accordance with Section 32 of the Act. While the Tenants stated that they notified the previous Landlord about the mould growth in the bathroom, I find that the Tenants could have been more thorough and communicated their concerns with the current Landlord, given the deteriorating condition of their washroom. As such, I find that the Tenants are partially at fault for the state of the washroom.

I find that other factors such as inadequate ventilation in the bathroom may have also contributed to the condition of the bathroom, which has been identified in the Mould Inspection Report provided by the Tenants. Furthermore, I accept that there is another occupant at the rental property who is experiencing a similar issue in their washroom.

I find that the Landlords have provided insufficient evidence to demonstrate that the bathroom required complete renovation as opposed to other remediation efforts which were proposed by the Mould Inspection Report provided by the Tenants. I am not satisfied that the damage found in the washroom is significant enough to end the tenancy. As such, I cancel the One Month Notice dated January 29, 2022. I order that the tenancy continue until ended in accordance with the Act.

The Landlord is at liberty to submit an application for Dispute Resolution seeking monetary compensation for repair costs associated with the bathroom repair. As I found that the Tenants breach Section 32 of the *Act*, I find that they are not entitled to the return of the filing fee.

Conclusion

The Tenants' Application is successful. The One Month Notice issued by the Landlord dated January 29, 2022 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: June 8, 2022

Residential Tenancy Branch