



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 15, 2022, and to recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In this case, the landlord’s evidence that was provided to Residential Tenancy is largely not viewable, as the photographs and text messages are in black and white. The tenant confirmed that their copy is also in black and white and are difficult to see.

The landlord confirmed they received the tenant’s evidence. I note the landlord was also served with evidence by tenant on September 26, 2022, in person, the landlord threw the tenants evidence into their door. The landlord text message to the tenant is that “I will not be taking evidence after you served me. You can’t keep adding evidence after you seen my package”.

In this case, I find the landlord response was unreasonable. The onus is on the landlord to prove the reasons within the Notice. The tenant can only defend their position once they have received the landlord’s evidence and submission regarding the Notice. The principles of nature justice required that the party, in this case the tenant, have all evidence and submission for the reasons for ending the tenancy, so they can fairly respond to the allegation. All evidence submitted by the tenant will be reviewed and

considered as it was provided to the landlord in accordance with the Residential Tenancy Branch Rules of Procedure.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on November 1, 2019. Rent in the amount of \$1,150.00 was payable on the first of each month. The tenant paid a security deposit of \$575.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on October 1, 2022.

The reason stated in the Notice was that the tenant has:

- Not done required repairs of damage to the unit.

The landlord testified that the tenant caused damage to the rental unit, and it could have been avoided, if the tenant had notified them that there was a water leak. The landlord stated that the faucet was loose which caused the countertop to rot. The landlord stated that their plumber said it was the worst they have seen and had to be ongoing for at least one year. Filed in evidence is a letter from the plumber.

The landlord testified that the backsplash where the countertop meets the wall there is a piece of MDF board that is damaged and the plumber says there could be damage behind the wall.

The landlord testified that the tenant also caused damage to the cabinet which is not normal wear and tear. That it is from the tenant opening the door harshly.

The landlord testified that bathroom sink caulking has been removed and you can pull the sink away from the countertop and the plumber indicated that that countertop may need to be replaced also; however, it has not yet been inspected.

The landlord testified that they did not ask the tenant to do the repairs. However, it was the tenant's responsibility to notify them of a problem at the time it occurs and not wait until the day before the inspection.

The tenant testified that they informed the landlord back in early August about the loose faucet, and there was no visible water leaks from the top or underneath the sink. The tenant stated that the only visible sign is if you look directly where the waterline and faucet connects to the sink. Filed in evidence a photograph of the countertop, the cabinet below the countertop.

The tenant testified that they did not damage the cabinet door as it was the hinge that came out of the door, under normal use. The tenant stated that when the cabinet repair person attended on September 9, 2022, they were told that this type of double door cabinet tends to break due to the MDF material.

The tenant testified that the caulking of the bathroom sink recently came off and there is no damage. The tenant stated it is the landlord's responsibility to regularly maintain the premises.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have not provided sufficient evidence to show that the tenants have:

- Not done required repairs of damage to the unit.

The landlord did not request the tenant to make the repairs to the rental unit. The landlord did not put the tenant on notice that if the repairs were not completed by a

specific date that they would end the tenancy. Rather, the landlord took it upon themselves to make the repairs. Therefore, I find the landlord is not entitled end a tenancy for this reason when no such request was made by the landlord to the tenant.

Further, while I accept the faucet was loose; however, there is no visible signs of water damage to the upper portion of the countertop or the lower cabinet, which you would expect to see if this had been an ongoing water leak. The only area where you can see any sign of a water leak is by directly looking under the sink and then directly at the waterlines, which is an area that would not normally be inspected by a tenant.

The photographs shows that there is a small area approximately two or three inches that is black and appears to mould. The MDF on the underside of the countertop does appear to look swollen or cracked. This would not support that this has been ongoing for an extended period of time.

Further, I do not accept the plumber's statement. I find it has to be extremely exaggerated "one of the worst I have witnessed" as the photographs show minimal damage, from what appears to be a small leak near that waterline, which is what you except to see with any water leak.

I am not satisfied that the tenant caused damage to the backsplash area by their actions or neglect. The landlord has used a product above the sink that is not meant to be near water and it is only reasonable that such a product would not last when near a water source.

I am not satisfied that the tenant has caused any damage to the bathroom countertop. The landlord provided no evidence and further the replacement of caulking is the landlord's responsibility.

I find the reason within the Notice has not been proven by the landlord. Therefore, I grant the tenant's application to cancel the Notice.

As the tenant was successful with their application. I find the tenant is entitled to recover the cost of the filing fee from the landlord. I authorize the tenant a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord in full satisfaction of this award.

Conclusion

The tenant's application to cancel the Notice, issued is granted. The tenancy will continue. The tenant is authorized a onetime rent reduction to recover the cost of the filing fee from the landlord.

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: October 17, 2022

Residential Tenancy Branch