



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenant seeks the following relief under the Residential Tenancy Act (the “Act”):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on August 31, 2022 (the “One-Month Notice”); and
- return of her filing fee pursuant to s. 72.

F.H. appeared as the Tenant. R.M. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

This matter was adjourned following a hearing on October 13, 2022 due to the Landlord’s late service of evidence. At that hearing, both parties acknowledged receipt of the others application materials. As both parties acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* that each parties application materials were sufficiently served on the other.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following aspects with respect to the tenancy:

- The Tenant moved into the rental unit on May 14, 2021.
- Rent of \$2,335.00 is due on the first day of each month.
- A security deposit of \$1,150.00 was paid by the Tenant.

The Tenant provided a copy of the tenancy agreement in their evidence.

The Landlord testified that she served the One-Month Notice on the Tenant on September 1, 2022 after leaving a copy under the rental unit door, sending a copy via registered mail, and emailing a copy to the Tenant. The Landlord advised that the Tenant was travelling at the relevant time. The Tenant acknowledges receipt of the One-Month Notice on September 1, 2022.

I have been provided with a copy of the One-Month Notice by the Tenant. It lists that it was issued on the basis that the Tenant has failed to complete required repairs and assigned or sublet the rental unit without the Landlord's written consent. In the details of cause section, the One-Month Notice states the following:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

I am providing notice to my tenant because she has not repaired damage to flooring I had requested, in writing, she repair by August 30th, 2022. To date, this has not been completed. Also, I am ending the tenancy because my tenant has sub leased my unit without my written consent. Her tenancy is a month to month rental agreement, not a lease.

The details are as follows:

On June 4th, 2022, my tenant approached me to sublease my unit. Later, on August 5th, 2022 I learned that the flooring had sustained water damage from the bathroom. I advised her on August 6th, 2022 that she could not sub lease my apartment and that the damage would need to be repaired. As noted above, I gave her written notice to repair the floor by August 22, 2022 which she has informed me she will not do. The date for having the repairs completed has past and now an additional occupant is in my unit which is likely sustaining further damage.

The Landlord testified that she went to pick up rent on August 5, 2022 from the Tenant and says she was told after she left that the Tenant was subletting the rental unit and that the flooring was damaged. I am advised by the Landlord that she had a flooring company come in to assess the damage and was advised by them that the damage was the result of misuse, that the localized area of the damage could not be repaired, and that the flooring would have to be replaced throughout the area.

The Landlord's evidence includes an estimate showing the cost of the repair to be \$5,303.00 and photographs of the affected area. The Landlord also provided a copy of an email from the flooring contractor dated August 18, 2022, stating the following:

Hi [Landlord]

After visiting your place the other day, we can confirm that damage to your hardwood is from water leak from your shower and went under hardwood for a period of time and moisture damaged hardwood. You also need to replace bathroom's threshold or transition as water has damaged that one as well. Since this wood is not available on the market, you have no option but replace hardwood.

The Landlord's evidence includes written submissions in which she states that the opinion of the contractor was that the Tenant's negligence "to dry the water once walking out of the shower, stepping and breaking the wood frame and walking with wet feet on the real wooden floor."

The Landlord further testified that she notified the Tenant on August 18, 2022 that she would have to repair the flooring. I am advised by the Landlord that the affected flooring is in front of the washroom. The Tenant clarified that the area is in front of the washroom and the entrance to the rental unit.

The Tenant denies that the flooring was her fault and argued that it is reasonable wear and tear. The Tenant testified that the flooring damage presented itself slowly over time and she did not notify the Landlord of the damage as she did not take note of the problem until the sub-tenant pointed it out to her when they came to view the rental unit. The Tenant denies trying to hide the flooring damage to the Landlord and states that she notified the Landlord on August 5, 2022 after the subtenant had pointed it out to her.

The Tenant testified that she had contacted the Landlord on June 4, 2022 to advise that she would be travelling and asked whether she could sublet the rental unit. The Tenant provides the following text message exchange with the Landlord from June 4, 2022:

Tenant: Hi [Landlord],
 I have a question. I am thinking of going to Europe this summer.
 Minimum 1 month maximum 3 months.

For the time that I'm not here, is it possible if I sublet this place so I don't lose it when I'm back?

Landlord: Hi dear,
Yes as long as it's a good person (preferably one person) and don't let anyone in the building know.

Tenant: Great! Thanks, I will let you know.

Landlord: Sounds good dear!

The Tenant's text message evidence also indicates that she gave notice to vacate the rental unit to leave, though this was later retracted by the Tenant. The Landlord accepted the Tenant's retraction, which can be seen in a text message exchange between the parties dated June 22, 2022:

Tenant: Good morning [Landlord],
I was rethinking my decision to move out. Can we go back to the subletting plan please?

Landlord: Good morning dear, yes sounds good!

Tenant: Great! Thanks a lot

The Tenant testified that she called the Landlord on August 5, 2022 to advise her the rental unit was being sublet and further stated that the issue was discussed on August 5, 2022 when the rent was paid. The Tenant testified that she found a sub-tenant to take the place on from August 15, 2022 until November 15, 2022. I am told by the Tenant that due to the present dispute, the subtenant vacated early, leaving on September 30, 2022.

The Landlord acknowledged the text message exchange with the Tenant, though emphasized that the tenancy was on a month-to-month basis and that she never gave written permission to sublet the apartment. The Landlord further argued that when she became aware of the flooring damage, she was concerned about potential liability with the sub-tenant such that the issue came to a head in early August 2022 such that the flooring issue affected her decision to permit the Tenant to sublet the rental unit.

Analysis

The Tenant seeks an order cancelling the One-Month Notice.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to ss. 47(1)(g) (failure to repair the rental unit) and 47(1)(i) (assigning or subletting the rental unit). Upon receipt of a notice to end tenancy issued under s. 47, a tenant has 10 days to dispute the notice. If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

In this instance, I accept the Landlord's evidence that the One-Month Notice was served on the Tenant via email sent on September 1, 2022. I further accept the Tenant's evidence that she received the One-Month Notice on the same date. It is unclear whether email is an approved form of service pursuant to s. 43 of the Regulations. However, I accept that the Tenant was travelling overseas at the time, such that email was the most practicable form of service under the circumstances. I find that pursuant to s. 71(2) of the *Act* that the One-Month Notice was sufficiently served on the Tenant and, as acknowledged by the Tenant at the hearing, was received on September 1, 2022.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed her application to dispute the One-Month Notice on September 3, 2022. Accordingly, I find that the Tenant filed her application within the 10 days permitted to her under s. 47(4) of the *Act*.

Looking first at the subletting issue, s. 47(1)(i) of the *Act*, referencing s. 34, requires that the Tenant obtain written consent to sublet the rental unit. I find that the Landlord did provide written consent in the text messages of June 4, 2022 and June 22, 2022. The text messages are unambiguous and clearly demonstrate that the parties discussed the Tenant subletting the rental unit with the Landlord consenting to her doing so. It is disingenuous, in my view, for the Landlord to argue that she never gave written consent when the text messages state the contrary. It would also be exceedingly unfair for the Landlord to represent to the Tenant that she could sublet the rental unit, only later to argue that she did not agree to this and use it as a pretext for ending the tenancy. I find that the Landlord has failed to demonstrate that the Tenant sublet the rental unit without written consent.

The second ground relates to the Tenant's failure to repair damaged flooring. Section 47(1)(g) of the *Act* states the following:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(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;

Looking to s. 32(3) of the *Act*, a tenant must repair damage to the rental unit caused by their actions or neglect, though this does not include reasonable wear and tear which is excluded by reference to s. 32(4).

There is no dispute the flooring is damaged. Review of the photographs demonstrates that the wood flooring is curling upwards. The Landlord argued that the damage was caused by the Tenant's misuse or negligence. The Tenant denied responsibility and testified there was no major spillage on the flooring in that area. I accept the evidence of the contractor as stated in the email of August 18, 2022 that the flooring was damaged over time from water leaking out of the bathroom. The photographs provided by the Landlord clearly show the shower stall immediately adjacent to the affected flooring.

The issue with the Landlord's argument is that it presupposes causation. Just because the Tenant is occupying the rental unit does not necessarily mean the damage was caused by her actions or neglect. It is just as likely that the damage resulted from a defect in the design, improper waterproofing between the spaces, or some other failure in the building elements. Review of the Landlord's evidence indicates that the contractor's opinion does not attribute fault to the Tenant, merely providing the opinion that a small water leak from the shower migrated under the flooring from the bathroom. This is not indicative of a misuse by the Tenant and supports that the cause is from a defect in the design or some other failure.

I also note that in the general course of use, a small amount of water will be carried out of the shower when someone exits. It is inevitable that some water will collect on the floor in front of the shower. I further note that the photograph provided by the Landlord shows that there is a bathmat in front of the shower. In other words, the Tenant cannot be said to have been negligent as she took reasonable action to mitigate the risk of water damage by using a bathmat in front of the shower.

I find that the Landlord has failed to demonstrate that the damaged flooring was caused by the Tenant's actions or neglect. As the Landlord failed to demonstrate the Tenant caused the damage, I find that the Tenant cannot be found to be responsible for its repair. Therefore, this ground for ending the tenancy must also fail.

I grant the Tenant her relief and cancel the One-Month Notice, which is of no force or effect.

Conclusion

The One-Month Notice is hereby cancelled. The tenancy shall continue until ended in accordance with the *Act*.

I find that the Tenant was successful in her application and is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee. I direct that pursuant to s. 72(2) of the *Act* that the Tenant withhold \$100.00 from rent due to the Landlord on one occasion in full satisfaction of her filing fee.

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: December 1, 2022

Residential Tenancy Branch