Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel a One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

This matter was reconvened from a prior hearing on February 3, 2023, which, in turn, was reconvened from a hearing on January 20, 2023. I issued interim decisions following each of those hearings. This decision should be read in conjunction with the interim decisions.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Evidence and Analysis

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting November 30, 2000. Monthly rent is $601 and is payable on the first of each month. The tenant paid the landlord a security deposit of $187.50, which the landlord continues to hold in trust for the tenant.

The parties agree that the landlord served the tenant with a one month notice to end tenancy for cause on August 21, 2021 (the "**2021 Notice**"), which was cancelled following an arbitration hearing on January 7, 2022. The landlord issued the 2021 Notice due to, among other things, damage the tenant allegedly caused to the rental

unit. In particular, damage to the walls and the outside screen for caused by the tenant's bicycle.

At the hearings for the present application, both parties made submissions on this damage as well. However, as the matter of damage to the rental unit's walls and screen door has already been addressed by a prior arbitrator and found not be a ground warranting eviction, I consider the matter already settled, and it can not form any basis for ending the tenancy at this hearing.

The parties agree that the landlord served the tenant with the Notice on August 30, 2022. The tenant disputed it the next day. The Notice specified the following reasons for ending the tenancy:

- The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- The tenant has put the landlord's property at significant risk.
- The tenant has caused extraordinary damage to the rental unit.
- The tenant has not done required repairs of damage to the rental unit.
- 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.

Additionally, the landlord provided the following details of the cause of eviction on the Notice:

> Tenant has been given written notice to maintain his suite to reasonable standards and has not done so.
> Dated August 19, 2019; May 30, 2021; August 21, 2021
> August 30, 2022 – [TS] called at 8:45 AM stating that [the tenant's] toilet was flooding his suite. [TS] had tried to plunge the toilet but it would not unplug. He would not go back into the suite as it made him vomit. [JL, PL, and their son, TL] attended to [the rental unit]. The tub was full to the top of dirty brown water, the toilet had feces still on it, and the bathroom floor was flooding and had entered onto the carpet outside the bathroom. In the basement under the suite water was pouring into the basement, flooding the basement. [TL] took buckets of water out of the tub as [the tenant] could not be bothered. He had not tried to unplug his toilet for a few days. [JL and TL] had cut out the toilet plumbing, finding that it was clogged with feces, a large piece of broccoli (approximately 5 inches in circumference), a wad of paper towel or toilet paper, and broken glass. These items were obviously flushed down his toilet and clog the sewer line. As we were in [the rental unit], we could see that he has not maintained his suite for

cleanliness and sanitary standards. He has not done repairs to the walls, kitchen cupboard, or bedroom closet doors. On March 8, 2022, a letter was sent to [TB], asking her to ensure the cleanliness of [the rental unit], after she stated she wanted to assist [the tenant] in dealing with his cleanliness. [The tenant] has now caused damage due to deliberately flushing items down his toilet, which is caused us costly repairs and damage.

1. The Flood

At the hearing, the landlords' representatives gave testimony which corroborated the written account set out on the Notice. They testified that they found the broccoli in a portion of the drain pipe which was only fed from the rental unit. TS stated that the morning of the day he discovered the flood, the tenant had asked him for a plunger, but did not state why he needed it. He argued that this indicated that the tenant was aware of the flood prior to notifying the landlord of it.

On cross-examination, PL stated that she was unsure if the tenant notified the landlord immediately after the toilet became plugged, but she assumed that he did not, and kept using the toilet after it was plugged. PL also stated that this was the first time the landlord had to respond to a flooding incident in the rental unit.

PL argued that by causing the flood the tenant put the landlord's property at significant risk. She stated that if it had happened on the second floor, units below could have been damaged by the water. However, as the rental unit is located on the first floor above a basement, the damage to the basement was minimal. I do not find this argument persuasive. The tenant cannot be evicted for damage that hypothetically could have happened had the situation been different. He can only be evicted based on the events that actually transpired.

JL testified that as a result of the flood, the carpet in the rental unit needed to be cleaned and a stove stored in the basement was rendered inoperable.

One of the tenant's witnesses, AD, is the tenant's social worker. She testified that following the flood, she steam-cleaned the carpets in the rental unit. She spoke with the tenant immediately after the flood occurred, and that he told her that everything was "OK" when he left the rental unit, but when he returned, he saw that it had flooded and that he immediately asked TS a plunger.

AD testified that following the flood, she arranged for a plumber to attend the rental unit to check if there were any further repairs required. There were not. She testified that the landlord did not do this and that JL attempted to fix the damage himself. She testified that she advised the landlord that her organization would pay for any damages caused by the flood, and that the landlord provided her with an invoice for $55, which her organization promptly paid. She testified that she was unaware that the stove was damaged, and that had she been, she would have paid for its replacement as well.

The tenant's advocates denied that the flood was caused by the tenant. The tenant testified that he does not each vegetables, the meals he received from a local shelter do not contain vegetables (at his request) and he would therefore not have had any broccoli in the rental unit to flush down the toilet. He denied flushing anything inappropriate down the toilet. He claimed that the flood occurred due to a damaged donut seal under the toilet itself. He stated that two or three weeks after the flood, the landlord replaced the donut.

Based on the testimony of the attendees, and the documentary evidence submitted by the parties, I do not find that the landlord has established it is more likely than not that the tenant caused the flood or, in the event that I am incorrect, that the flood put the landlord's property at significant risk or seriously jeopardized the health, safety or lawful right of the landlord or other occupants in the building.

The extent of the damage caused by the flood was minimal and easily remediated. The landlord had to replace some pipes in the basement and a stove was damaged. The tenant's position was that the flood was reported immediately, which means that his actions minimized the damage. The landlord's position is that he failed to do this, which would mean that the flood was so minor that even going unreported for a period of time, it did not cause significant damage.

No evidence has been tendered as to any negative health or safety consequences to the landlord or other occupants of the rental unit as a result of the flood. Accordingly, I do not find that this is a valid basis for ending the tenancy.

2. Condition of the Rental Unit

JL also alleged that the tenant is a hoarder. The photographs of the rental units submitted into evidence show a large pile of laundry in the corner of the bedroom, spilling out of the closet, but do not depict any other instances of an unreasonable

accumulation of belongings. I do not find that this alone causes the tenant to be considered “a hoarder” or that it poses any significant risk to the landlord’s property.

JL testified that the tenant damaged the closet doors in the bedroom so badly that the landlord had to throw them out. She did not specify how they were damaged. Additionally, she testified that the tenant “ripped off” the face of one of the kitchen cabinet drawers. On March 8, 2022, PL sent TB, who is works for a non-profit organization assisting the tenant, a letter demanding that he replace the closet door and the kitchen cupboard door by May 15, 2022. As of the date of the hearing, the closet door and the cabinet door had not been replaced.

Finally, JL testified that when she attended the rental unit to deal with the flood, she saw that the tenant used a plastic shopping bag to collect his garbage in the living room, and an extinguished partially smoked cigarette on the couch. She provided photographs of both these. She argued that the use of cigarette on flammable furniture posed a “safety hazard” and argued that using a plastic shopping bag as a garbage receptacle was inappropriate.

I do not find that either of these represent a safety hazard. The landlord did not establish that the cigarette was actually smoked inside the rental unit. Additionally, I note that in years prior the tenant as permitted to smoke in the rental unit. I do not see how smoking inside could be acceptable in prior years, but now represents a safety hazard. I do not find it unreasonable to use a plastic bag to collect garbage that accumulate in the living room. There is nothing inherently dangerous or unhealth about this, and it is certainly a preferable to allow garbage to be strewn about the living room. I concede that a more hygienic manner of collecting garbage would be to place it in an enclosed garbage receptacle. However, this does not mean that other means of collecting garage are unreasonable or warrant ending a tenancy.

JL cross-examined the tenant, and put statements made by the tenant’s sister (who formerly worked for JL) to the tenant regarding the condition of the rental unit. The tenant disagreed that the statements were true. His sister was not called to give evidence. I assign no evidentiary weight to the alleged statements of the tenant’s sister as she did not provide testimony or evidence, and JL did not provide any reason why she was unable to do so.

Another of the tenants’ witnesses, JA, is also the tenant’s social worker and testified that she has been inside the rental unit. She stated that she has no concerns regarding the cleanliness of the rental unit and has no health concerns for the tenant. She stated

that she has only seen the living room and entryway of the rental unit and has not been in the town's bedroom.

AD testified that she has attended the rental unit on more than one occasion and found it to be “tidy” and to have an “average accumulation of belongings”. She testified that she noticed the front panel of a kitchen drawer was missing, but it looked fixable and was not a “major concern” for her. She testified that she did not see anything which would have posed a danger to the tenant’s health or to the residential property.

I do not find that the tenant has caused “extraordinary damage” to the rental unit or the residential property. There is nothing “extraordinary” about the nature of the damage the landlord’s allege the tenant caused. The damage alleged to have been caused by the tenant is minor in nature.

Based on the photographs submitted into evidence, and the testimony of the tenant’s witnesses, I do not find that the rental unit’s condition poses a health or safety risk to any occupant of the residential property or to the landlord.

The landlord did not point to any term in the tenancy agreement which it claimed to be “material”. Additionally, the landlord did not meet all the criteria required for ending a tenancy set out in Residential Tenancy Branch (the “**RTB**”) Policy Guideline 8:

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
> • that there is a problem;
> • that they believe the problem is a breach of a material term of the tenancy agreement;
> • that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> • that if the problem is not fixed by the deadline, the party will end the tenancy.

The landlord did not specify that they considered the failure to repair to be a breach of a material term nor did they specify that the landlord would end the tenancy should the repairs not have been made. As such, this is not a basis on which the tenancy could be ended.

Finally, I find that the closet door and the front of the kitchen cabinet require repairs. However, I am not satisfied that the tenant is responsible to make these repairs. Section

32 of the Act states that a tenant is not required to make repairs for reasonable wear and tear.

RTB Policy Guideline 40 sets out the useful life of doors at 20 years and the useful life of kitchen cabinets at 25 years. The tenancy has lasted over 20 years. There is no evidence before me to suggest that the closet door or kitchen cabinets were ever repaired or replaced during the tenancy. These elements are at or nearing their useful life. I find that the damage to these elements is of the sort to be expected in the course of their reasonable usage for 20 years. As such, I find that they are the result of reasonable wear and tear.

Accordingly, I do not find that the tenant was required to repair them.

For these reasons, I do not find that the landlord has proven it is more likely than not that the tenant acted in such a way that would warrant ending his tenancy. I cancel the Notice.

3. Tenant's Capacity to Care for Himself

Throughout the hearing, the landlord's representatives gave evidence as to the tenant's inability to care for himself. They argued that he would be better served by moving to an assisted living facility. The tenant's advocates argued that the tenant was capable of caring for himself.

The Act does not give me the jurisdiction to make findings as to an individual's capacity to care for themselves. The Act does not list an inability to care for oneself as a reason why a tenant may be evicted from a rental unit. As such, I will not set up the details of the landlord's representative's allegations, nor the tenant's response. They are not relevant to this application, and I explicitly make no finding it has to the tenant's capacity to care for himself.

Conclusion

I grant the tenant's application.

I order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

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: April 14, 2023

Residential Tenancy Branch