



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenants for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that they provided no supporting evidence for this hearing.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started in 2014. Rent of \$805.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$307.50 as a security deposit. On January 20, 2023 the Landlord gave the Tenant a one month notice to end tenancy for cause dated January 20, 2023 (the “Notice”). The reasons set out on the Notice is that the Tenant put the Landlord’s property at significant risk and that the Tenant has caused extraordinary damage to the unit. The Notice sets out details of incidents that occurred on January 18 and 19, 2023.

The Landlord states that on January 18, 2023 the Tenant caused water to flow from their unit to the lower unit by having turned on a kitchen tap and allowing hot water to

flow over the sink. The Landlord was alerted to the flood by the tenant in the lower unit. The Tenant was inside the unit when the Landlord sought entry however the Tenant only laughed so the Landlord used their master key to gain entry. The Tenant was not dressed and told the Landlord that the Tenant loved the steam. The Landlord stopped the flow of water and immediately made repairs to clean up the water and stop the leak to the lower unit.

The Landlord states that on January 19, 2023 water was coming into the Landlord's office. The Landlord went to the Tenant's unit as the source of the water and was refused entry, so the Landlord called the police for a health and wellness check. The police arrived about a half hour later and allowed the Landlord to enter the unit and shut off a bathtub tap that had been left flowing. Another family member arrived and informed the Landlord that the Tenant was not taking their medication. The Tenant was taken to the hospital and was seen back at the unit a week later. The Landlord believes that because this occurred on two occasions with the Tenant purposely turning on taps and refusing entry on the one occasion a flood will occur again causing more damage to the unit. The Landlord states that in 2021 or early 2022 a flood occurred from the unit however the Landlord accepted that the flood was caused by a faulty dishwasher that the Landlord inspected at the time. The Landlord states that there have been no other incidents since the Notice was given.

The Landlord states that the Tenant caused extraordinary damage to the lower unit that requires repairs to the drywall and insulation in the ceiling. The Landlord has not made the repairs to the lower unit and states that the tenant that was residing in that unit has since moved out. The Landlord states that the tenant moved out because they believed that the unit would be flooded again by the Tenant. The Landlord states that the water also buckled the linoleum in the Tenant's unit. The Landlord does not know the age of the linoleum. The Landlord states that they believe the subfloor is also rotten however the Landlord has not yet checked for this damage. The Tenant states that the linoleum has been there since the outset of the tenancy.

The Tenant states that the incidents were not caused purposely and that at the time the Tenant was having a severe mental issue related to not being on their medication. The Tenant states that they have been on this medication for the past 8 or 9 years and in the past has only stopped taking the medication on three occasions when it ran out. The Tenant states that they are currently under medical care of a physician, are waiting for a follow-up appointment with a specialist and that they are on their medication again.

Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk; or the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property. The Landlord has provided no supporting evidence to show extensive damage to either the lower unit or the Tenant's unit such as an inspection report and repair estimate. It is undisputed that the only damage determined so far to the Tenant's unit is to the counter and to some aged linoleum. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant did anything to cause extraordinary damage to the unit or the building. The Notice is therefore not valid for this reason.

This is a long-term tenancy. The Landlord did not dispute that the Tenant has a psychological problem. I accept the Tenant's persuasive evidence this problem has been present over the duration of the tenancy and there is no evidence that this problem caused any issues with the tenancy until the two days in January 2023. There is no evidence that the prior incident is in any way related to the Tenant's psychological problem. I also accept the Tenant's persuasive evidence that the Tenant was not taking their medication on the two days in January 2023 and that this led to the incidents occurring. I accept the Tenant's evidence that they are back on their medications. For these reasons and given the limited damage that occurred from the two days in January

2023 I consider that this was an isolated incident, and that the Landlord has not substantiated that the Tenant has put the Landlord's property at significant risk. The Tenants are entitled to a cancellation of the Notice and the tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 17, 2023

Residential Tenancy Branch