



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenants' application to cancel two One Month Notices to End Tenancy for Cause (Notice).

Issues to be Decided

1. Did the Tenants' conduct pose significant risk to the Landlord's property?
2. Did the Tenants breach a material term of the lease?

Background and Evidence

The tenancy commenced on February 28, 2022 for a fixed term of one year. The monthly rental rate of \$2,200 was due on the 30th of each month and the Tenants were responsible for 60% of the utilities. A security deposit of \$1,100 was paid by the Tenants and the Landlord retains that deposit. A condition report was completed by the parties on February 28, 2022 and each room of the rental unit was noted as being in "good condition."

An addendum to the tenancy agreement provided, in relevant part, that the Tenants were to maintain the rental unit in "a clean and tidy condition."

On January 28, 2023, Landlord issued a Notice to end the tenancy for cause. The Notice was dated January 28, 2023 and provided a move-out date of March 31, 2023.

The Notice stated that the Tenants were engaged in illegal activity that was likely to damage the Landlord's property, and that the Tenants' conduct seriously jeopardized the health and safety of the Landlord or others.

On March 28, 2023, the Landlord issued a second Notice with a move-out date of May 31, 2023, which asserted that the Tenants were posing a significant risk to the Landlord's property and, based on advice of counsel, had breached a material term of the tenancy agreement.

Copies of each Notice were provided in evidence. Service of the Notices was made by registered mail. The Tenants timely applied for dispute resolution to cancel each Notice which was served on the Landlord.

At the hearing, the Landlord stated that there were two basis for ending the tenancy: that the Tenants were "hoarders," and that the Tenants were causing a water leak from their bathroom to the unit below. The Landlord alleged that the Tenants' conduct posed a significant risk to the property warranting that the tenancy end. The Landlord's agent noted that the Notices each provided two months to move out as the Landlord did not think the Tenants could accomplish a move-out in one month. Testimony during the hearing elicited that the Landlord inspects the rental unit each month at the time she collects rent.

1. "Hoarding" of Personal Property in the Rental Unit

During an inspection of the rental unit by the Landlord on April 21, 2023, the Landlord took a series of photographs. The photographs depict boxes stacked along walls in some rooms, and clothing and other personal property stacked in another room. The photograph of the hallway shows several boxes stacked along the wall. A photograph of the kitchen shows a lived-in presence, as well as some additional personal property. The Landlord also submitted a photograph of a pre-fabricated storage unit in the backyard, which she requested the Tenants purchase to store their personal property.

The Landlord provided copies of letters to the Tenants dated June 1, August and December 5, 2022 regarding her objection to the Tenants' accumulated personal property.

Additionally, the Landlord submitted email correspondence between her and her insurance agent in which she described the Tenants' conduct as hoarding. The insurance agent replied that the Landlord may lose coverage in such an event.

The Tenants also took photographs of the interior while the inspection was being conducted by the Landlord. The photographs show more of each room and hallway and provide a better perspective of the interior. While some boxes were piled along the hallway, the path was clear. Additionally, boxes in a spare bedroom were along one wall and the majority of the room remained vacant. There were a few boxes in the kitchen, and the main bedroom, while cluttered, was not overtaken by personal property. Finally, the exterior shed erected by the Tenants at the Landlord's request, was locked and no debris or boxes were outside the shed.

The Tenants testified that after they received the June 1, 2022 letter from the Landlord complaining about their personal property, they purchased the exterior shed where they store their belongings. They stated that since that time they have maintained the rental unit in a clean manner.

2. Water Leak to Downstairs Unit

The Landlord also presented photographs relating to the condition of the bathroom in the rental unit. The photographs show baseboards behind the toilet have sustained some damage, presumptively from water. The photographs present various views of the plumbing and pipes that were exposed by a plumber when conducting his inspection on April 29, 2023 to determine the source of the water leak. A copy of the plumber's invoice was submitted, and provides simply that water may be coming from "bathtub (splashing)." The Landlord also submitted a letter from the downstairs tenants dated April 30, 2023, stating that they were experiencing water dripping from their ceiling which they suspect was coming from the upstairs unit's bathroom.

The Landlord's agent noted that the condition inspection report indicated no known water damage yet the photographs taken during the inspection show water damage to the wall and trim behind the toilet. The Landlord's agent stated that the leak was coming from the Tenants' unit and therefore, the Tenants "must be do something" to cause the leak.

The Tenants testified that they close the shower curtain each time they use the shower and there are no puddles of water in the bathroom. They were present when the

plumber came to investigate the issue and stated that the plumber checked behind the toilet and found no water leak. Tenant D.B. suspects that, based on viewing the pipes exposed by the plumber during the inspection, water condensation on the pipes is the source of water leaking to the downstairs unit. Tenant D.B. further testified that in December 2022 he spoke with the previous downstairs tenant who said the water spots in that unit were old.

Analysis

Section 32(2) of the Act requires the tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. This standard of cleanliness was made a term of the parties' rental agreement.

While certain portions of the home are cluttered with clothing and various personal items, and other areas have boxes stacked along the perimeter walls, the passageways remain clear. The boxes are stacked in a tidy manner and no stack appears precarious. Additionally, the Tenants' personal possessions do not overwhelm the rental unit and it remains in a clean and habitable condition. Upon request of the Landlord in June 2022, the Tenants did comply and purchase an outdoor shed that they use as a storage unit.

The Landlord's correspondence with her insurance agent presupposes that there is a "hoarding" condition and elicits the expected response that insurance may be canceled in such an event. This is neither evidence of hoarding nor loss of insurance coverage. There are no fire marshal or other safety inspection reports that support the Landlord's position that the Tenants are hoarding or otherwise posing a significant risk of harm to others or the Landlord's property.

With regard to the plumbing leak, there was no evidence to sustain a finding that the Tenants' manner of use of their bathroom was the cause of the water leak to the downstairs unit. Equally important, there is no evidence that the water leak and stains seen in photographs of the downstairs unit are attributable to the time that the Tenants have been in possession of the rental unit. While the condition report states that the bathroom walls and trim were in "good" condition, the term is broad enough that the baseboard and trim damage behind the toilet may have been encompassed within this description at the commencement of the tenancy.

Policy Guideline 8 defines a material term of a contract as: “a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.” Generally, the due date and payment of rent is considered a material term, as is the rental unit location. There is no showing that the “clean and tidy” provision of the rental agreement is a material term, one which both parties agree is so important and fundamental to the contract that even a trivial breach will support a termination of the agreement.

The onus of proof is on the Landlord to establish that the Tenants have “hoarded” such that it poses a significant risk of harm to others or the property; and that the Tenants’ conduct is the source of any water damage to the downstairs unit. The Landlord has not met that burden on either issue. I find the Landlord has not provided sufficient evidence to support a finding that the Tenants personal property or use of the bathroom has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord or placed the Landlord’s property at significant risk. Further, I do not find that the Tenants are in breach of a material term of the rental agreement.

Conclusion

I cancel both One Month Notices to End Tenancy issued by the Landlord. I find that the Tenants are the prevailing party in this dispute resolution and award to them a one-time reduction of \$100, representing the filing fee, from their July 2023 rent.

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 13, 2023

Residential Tenancy Branch