Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNC, LRE, OLC, FFT
Landlord: OPC, MNDL-S, FFL

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy (the "Notice"), pursuant to section 47;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant, the landlord and the landlord's property manager (the "manager") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue- Service

Both parties agree that they were each served with the other's application for dispute resolution and evidence. I find that they were each sufficiently served for the purposes of this *Act* with the above documents, under section 71 of the *Act.*

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the "Notice") and the continuation of this tenancy is not sufficiently related to any of the tenant's or landlord's other claims to warrant that they be heard together.

I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Notice and recovery of the filing fee for this application. I exercise my discretion to dismiss all of the landlord's claims with leave to reapply except an Order of Possession for cause and recovery of the filing fee for this application.

Issue(s) to be Decided

- Is the tenant entitled to cancellation of the Notice, pursuant to section 47 of the *Act*?
- Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
- Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
- Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

The manager testified that the tenant was served with a material breach warning letter (the “breach letter”) via email and posting on March 24, 2023. The tenant testified that she received the breach letter on March 27, 2023. The manager testified that she received a read receipt for the March 24, 2023 email stating that the tenant received the breach letter on March 24, 2023. The read receipt was not entered into evidence, I provided the landlord with 24 hours to upload the read receipt for consideration. The read receipt was not entered into evidence. The manager testified that the tenant signed a form 51 email service agreement. This was not disputed by the tenant.

The breach letter states:

> As you know I attended the home today at 11:55 am to do a walk through inspection commissioned by the owner [the landlord].
>
> These are the issues and alterations without the owners permission that I observed:
>
> 1) You installed a hood fan and box cover to the ceiling and had it wired into the electrical panel without the proper permits or permission from the landlord.
> 2) You altered the free standing coat closet and nailed a board to the back of the landlords furniture without permission from the landlord.
> 3) You installed (affixed (screwed) to the NEW tile) a handrail in the bathroom without permission from the landlord.
> 4) You painted (or sanded/tried to refinish) the built in "antique bureau" in the bedroom without permission from the landlord.
> 5) You installed weatherstripping and a new hydraulic door closer to the exterior doors without
> permission from the landlord.
>
> You have breached a material term of your lease. As per your lease addendum paragraph 10 you are not permitted to do any alterations without prior written consent of the landlord.
>
> {10} WALLS, FLOORING - PAINTING & ALTERATIONS:
> No structural alterations, painting, redecorating or driving of wall anchors, nails, screws or tacks in walls floors or woodwork shall be done without the express written consent of the Landlord. Should the tenant wish to

> affix items to any walls by use of wall anchors, mount, nails, screws or tacks, or the like, the landlord reserves the option to return all walls in the original condition including charge back info to the tenant for painting, sanding and repainting to match or return to original conditions. Should the tenant wish to repaint any walls in custom colours, approval by the landlord is first required and the landlord may exercise option at the end of tenancy to require the tenant to return said walls to their original paint colours and conditions as at the onset of tenancy. Any TV mounts and/ or shelving affixed by the tenant may require removal and/or patch, sanding and repainting at the discretion of the landlord at the end of tenancy.
>
> This is your formal notice that you have until March 30,2023 to rectify these issues and put the property back in the condition it was when you moved in. Failure to do so will result in you receiving a 30 day notice to vacate the property.

Both parties agree that the tenant completed the alterations described in the breach letter and after receiving the breach letter did not return the subject rental properyt to its move in condition by March 30, 2023. The tenant testified that all alterations were made without the permission of the landlord except for the installation of the hood fan in the kitchen.

Both parties agree that the landlord and the tenant met at the subject rental property with the tenant’s handyman near the start of the tenancy. The tenant testified that the landlord was not willing to purchase the hood fan or share in its cost and was not sure that a hood fan could be property installed in the space. The tenant testified that she offered to get her electrician to install the hood fan and that if it was not possible then it would not be installed. The tenant testified that the landlord said “fine” and walked away. The tenant testified that the hood fan was then installed.

The landlord testified that at the meeting she had great trepidation with running wires for the installation of the hood vent. The landlord testified that when she attended, the tenant had already purchased the hood vent. The landlord testified that she told the tenant that she could return the hood vent. The landlord testified that she told the tenant and the handyman that she did not want anything hanging from the ceiling. The landlord testified that after she left the tenant installed the hood vent anyways.

The tenant entered into evidence a signed letter from her handyman which states that the landlord showed up during his installation of upgrades including the installation of

the weather stripping and hood vent and did not express any kind of objection towards their installation.

The tenant testified that she installed the safety bar in the bathroom because she needed one. The tenant testified that the alterations she made bettered the property. Both parties agreed that the safety bar was screwed into the tiles in the bathroom. The landlord testified that had the tenant asked for safety bars she would have approved a suction cup variety that did not damage the bathroom tiles.

Analysis

The manager testified that the tenant was served with the breach letter on March 24, 2023 via posting and email. No proof of service documents for same were presented. The tenant testified that she received the Notice on March 27, 2023. The manager testified that the tenant received the Notice on March 24, 2023 via email. I find that the landlord has not proved, on a balance of probabilities, that the tenant received the Notice on March 24, 2023 as the read receipt for the alleged March 24, 2023 email was not entered into evidence. I find that the tenant received the Notice on March 27, 2023. I note that the deeming provisions in section 90 of the *Act* state that documents emailed or posted are deemed received three days after their posing or emailing, which, in this case, also falls on March 27, 2023.

Section 47(1)(g) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

[Emphasis added]

Section 32(3) of the *Act* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 47(1)(h) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

[Emphasis added]

Based on the breach letter entered into evidence, I find that the landlord provided the

tenant with a deadline to complete all requested repairs of March 30, 2023, which amounted to only two clear days to complete all the listed repairs. I find that those two clear days is not a reasonable deadline. I note that had the breach letter been received on March 24, 2023, the landlord would have provided the tenant with five clear days to have the requested repairs done. Given the length of the list of requested repairs set out in the breach letter and that some of the requested repairs required the hiring of tradespeople, I find that two to five days was not a reasonable deadline.

I dismiss the Notice because the landlord did not provide the tenant with a reasonable amount of time to complete the requested repairs. I make no finding on the landlord's entitlement to request said repairs or have said repairs completed by the tenant.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the $100.00 filing fee from the landlord.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlord.

As the landlord was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the filing fee from the tenant.

Conclusion

The Notice is cancelled and of no force or effect.

The tenant is entitled on one occasion to deduct $100.00 from 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: July 10, 2023

Residential Tenancy Branch