



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNC MNDC FF

Landlord: OPC OPN MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 18, 2024.

Both parties attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's Notice of Dispute Resolution Proceeding and evidence packages. Neither party took issue with the service of these documents and both parties were ready to proceed.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is

ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on both applications with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

Further, since the Landlord's application for an order of possession based on this Notice is related, it will also be considered in this decision. The Landlord also applied under the ground that the Tenant has given written notice to end tenancy. However, there is no evidence that any written notice was provided by the Tenant such that this ground would be applicable. I hereby dismiss it in full, without leave.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on December 21, 2023. The Notice indicates the following reasons for ending the tenancy on the second page:

1. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Under the details of Cause section of the Notice, the Landlord indicated the following:

ON INSPECTION DECEMBER 16, 2023 the following was found:

Extensive oil painting to walls in psychedelic colors with paint extending to ceilings, extensive duct tape and wall paper to walls, writing on walls and doors, trim painted amateurishly , paint splashed over vinyl siding, refrigerator rubber trim broken and removed, microwave door broken in half, bathroom vanity damaged beyond repair, stove scratched with cook top thick burnt food unable to remove.

The Landlord stated explained that this unit is about 10 years old and was in good condition at the start of this tenancy, about 4 years ago. The Landlord explained that the rental unit was freshly painted at the start of this tenancy, and all material items were in good working condition. The Landlord explained that in the fall of 2023, the Tenant started complaining of malfunctioning appliances (washer/dryer, and fridge). After replacing the washer and dryer, the Landlord sent a technician to investigate the fridge. It was at this time that the Landlord was put on notice that the apartment was in poor

condition, generally, and that the fridge had abnormal wear and tear. Ultimately, the door seal on the fridge was too expensive to replace, so the Landlord replaced the appliance.

The Landlord performed a follow up inspection of the unit, along with his technician and some cleaners. The Landlord explained that he was shocked that the walls and trim were poorly painted, there was excess moisture in the unit, unrepairable fridge seals, broken microwave door, poorly cleaned stovetop (cleaners could not clean up), bifold doors resting beside the closet, hole in the hallway wall, paint splatter on siding, use of wallpaper, missing door bolt, chrome faucet in bathroom painted in gold, and damaged patio blinds.

The Tenant stated that she has lived there for 5 years without issue, and since this unit is nearly 10 years old, there are items which are starting to fail, such as some of the appliances and other minor items. Although the Tenant was very scattered in her testimony, she generally asserted that most of the issues are based on normal wear and tear, and she denied damaging the stove or the fridge, although she did acknowledge breaking the microwave. The Tenant pointed to her photos to show that she has since cleaned up much of the superficial paint and tape the Landlord took issue with, and she pointed out that it was water based paint, not oil. The Tenant stated that she is not sure what the surface damage is on the counter in the bathroom.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. The Notice was issued under the following grounds:

1. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

I have reviewed the testimony and evidence provided. I note there have been a few issues with the appliances. Policy Guideline 40 provides some insights into how long appliances are expected to last, generally, with normal wear and tear. Microwaves are 10 years, stoves are 15 years, washer/dryer is 15 years. While most of the appliances are still within their normal expected life expectancy, I note the microwave is nearly 10 years old, and likely didn't have much expected life expectancy left. That being said, the washer/dryer, and the fridge were 2/3 of the way through their expected life expectancy,

which suggests that it would not be outside of the norm to potentially see repairs in the latter part of the appliance life span. I find there is insufficient evidence that the use of these appliances was significantly beyond normal wear and tear such that it could be classified as “extraordinary” damage.

Further, while I accept that the other items raised by the Landlord are discouraging and disappointing as he expected the Tenant to take better care of the rental unit and its contents, I find most of the issues appear to be largely superficial and/or minor in nature when viewing the tenancy in totality (such as tape, paint, blind damage, wallpaper, door off-track, missing bolt, vanity counter damage). Although the Tenant may have directly caused some of the issues, and may be liable for them if she doesn’t repair them before moving out, I find they do not amount to “extraordinary damage” to the unit, such that the tenancy must end under this ground.

The Tenant’s application is successful and the Notice is cancelled. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant’s application is successful. The Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: March 18, 2024

Residential Tenancy Branch