

Decision

Dispute Codes: CNC, OPC

Introduction

This hearing dealt with an application from the tenant for cancellation of the landlord's 1 month notice to end tenancy for cause. The landlord seeks an order of possession in the event the tenant's application fails. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to cancellation of the notice to end tenancy
- Whether the landlord is entitled to an order of possession

Background and Evidence

This month-to-month tenancy began more than 11 years ago in August 1998. Currently, rent in the amount of \$598.00 is payable in advance on the first day of each month.

An annual inspection of the unit was conducted by the landlord on or about June 16, 2009. Following this, in a letter to the tenant dated June 29, 2009, the landlord directed the tenant to take the steps necessary to repair knife cuts and / or burn marks on the kitchen-counter. The landlord takes the position that the problems identified with the countertop are not a result of "reasonable wear tear," and the tenant is instructed to complete the repairs no later than August 14, 2009. The tenant was informed that while she could find her own contractor to do the repairs, the landlord provided a price quote for her consideration.

The price quote describes repairs which go beyond the concerns identified in the landlord's letter of June 29, 2009. Specifically, in the price quote there is reference to the following materials and labour:

Supply and Install Counter-top, two side open....

Re-install the kitchen double sink and faucet

Change cabinet door....

The above price quote concerns water damage to the countertop and to cabinet doors, which the landlord alleges is the result of inadequate attention by the tenant to keeping the surfaces dry. The total estimated cost of the materials and labour is \$1,100.00.

During the hearing the landlord's agent stated that it appears to have been an administrative error or oversight which led to a discrepancy between concerns identified in the landlord's letter of June 29, 2009 (knife cuts and / or burn marks) and the price quote which addresses water damage to the kitchen countertop and cabinet doors. Indeed, the tenant disputes that there are knife cuts or burn marks on the countertop, and submits that the mark on the countertop which is shown in the landlord's photographs was the result of a chopstick passing through a coconut.

Subsequent to the landlord's letter of June 29, 2009, as the tenant did not undertake any repairs, the landlord issued a 1 month notice to end tenancy dated October 23, 2009. A copy of the notice was submitted into evidence. The reason shown on the notice for its issuance is as follows:

Tenant has not done required repairs of damage to the unit

There was no documentary evidence of the outcome of any annual inspections of the unit that may have been completed by the landlord, and either signed or initialed by both parties.

Analysis

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part, as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (g) 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;

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause dated October 23, 2009.

The tenant disputed the notice by filing an application for dispute resolution on October 28, 2009, which is within the 10 day period permitted in the Act following receipt of the notice.

Residential Tenancy Policy Guideline # 37 speaks to the Useful Life of Work Done or Thing Purchased. The estimates set out in this guideline are intended as a general guide, such that the “useful life” of work done or thing purchased may vary according to different circumstances. In other words, the *actual* “useful life” of some items *may exceed the estimated* “useful life,” whereas the *actual* “useful life” of other items *may fall short of the estimated* “useful life.”

Further, Residential Tenancy Policy Guideline # 1 addresses Landlord & Tenant – Responsibility for Residential Premises, and provides in part, as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of the premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As to “useful life,” the guideline speaks to “Furnishings” and includes reference to “Cabinets, Counters: Bath, Kitchen.” The 25 year estimate of “useful life” in this guideline with regard to cabinets and counters, is thought to be in reference mainly to their overall structural integrity. However, the guideline includes no specific reference to *laminated countertop* which is the central issue in this dispute. Of only limited value in the circumstances of this case, the guideline also speaks to “wood and plastics,” and “thermal and moisture protection,” and “finishes.”

More on point is documentary evidence submitted by the tenant which includes excerpts from BC Housing's "Housing Provider Kit" ("Kit"). Included in the Kit is a "Standardized List of Replacement Items – Including Estimated Useful Life." As for countertops, in the case of a family occupancy the Kit identifies the estimated useful life to be 15 years.

An excerpt from Chapter 4 of the Kit includes instruction to the landlord in relation to "Regular, Cyclical and Emergency Maintenance." In part, this instruction provides as follows:

Use a detailed maintenance checklist and schedule to ensure the building and site are regularly inspected and consistently well maintained. Routine maintenance can identify problems at an early stage, allowing remedial work to be completed before a problem becomes significant.

In the circumstances of this dispute, as earlier stated, there is no evidence that a "detailed maintenance checklist" was completed by the parties after each annual inspection of the unit. In the absence of a routine documentary record of the annual status of the countertops (or any other aspect of the unit), other causes for the countertop damage cannot be ruled out. These may include premature failure of sealing around the sink, or deficiencies in construction, or obsolescence of existing components, and so on. Presumably, the subject damage did not occur overnight.

Accordingly, it is speculative to conclude that water damage to the countertops is beyond normal wear and tear and is directly the result of "actions or neglect" on the part of the tenant. Had damage been detected early, consideration of expensive replacement of countertops and cabinet doors may have been avoided in favour of less costly and only minor repairs. The landlord's proactive undertaking of minor repairs may still provide a remedy for the countertop until the estimated "useful life" of 15 years is achieved in less than 4 years from now. Presently, there is no tenant application before me which seeks an order instructing the landlord to make repairs to the unit.

I find that the mark on the countertop which is shown in the landlord's photographs, can fairly be considered to be a result of 11 years of normal wear and tear in the circumstances of a family occupancy. I further find that there is no evidence of knife cuts or burn marks.

The onus of proof on any application is on the applicant, and the standard of proof is on the balance of probabilities. I find that the landlord has not met the required standard of proof in establishing cause, in aid of the request for an order of possession. In short, I find there is insufficient evidence to support the proposition that water damage is either in excess of normal wear and tear, or that it is directly the result of deliberate damage or neglect on the part of the tenant. I therefore set aside the landlord's notice to end tenancy, with the effect that the tenancy continues in full force and effect.

Finally, as the subject of landlord access to a rental unit was raised during the hearing, for the information of the parties, attention is drawn to section 29 of the Act which speaks to **Landlord's right to enter rental unit restricted**, as follows:

29(1) A landlord must not enter a rental that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

The full text of the Act, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Conclusion

Pursuant to all of the above, I hereby cancel the landlord's 1 month notice to end tenancy for cause. The tenancy continues in full force and effect.

DATE: December 10, 2009

Dispute Resolution Officer