



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause. The tenant was also seeking damages, including the cost of moving.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the One-Month Notice to End Tenancy for Cause be cancelled?

The burden of proof is on the landlord/respondent to justify that the Notice to End Tenancy complies with the criteria specified under the Act.

Background and Evidence

The tenancy began on October 1, 2012 and the rent is \$850.00. A security deposit of \$425.00 and pet damage deposit of \$425.00 were paid. The landlord testified that a One-Month Notice to End Tenancy for Cause was issued and served on the tenant in person on February 2, 2013, terminating the tenancy effective March 31, 2013. A copy of the Notice was in evidence. The basis for the Notice was that the tenant had caused extraordinary damage to the unit or property, and that there was a breach of a material term of the tenancy agreement.

The landlord testified that the tenant had already corrected the breach of the material term. However, the landlord still sought to end the tenancy based on extraordinary damage.

Evidence submitted by the landlord included: a copy of the tenancy agreement, a copy of the application for tenancy, a copy of the One-Month Notice to End Tenancy for Cause, copies of communications, written testimony and photographs.

The landlord testified that, after inspecting the rental unit in November, 2012, the landlord verbally cautioned to clean up excessive personal items stored in the rental unit. The landlord also remarked that the unit was not very clean.

The landlord testified that on February 2, 2013, the landlord conducted a second inspection and found that there was excessive damage to the rental unit. The landlord testified that the rental unit was cluttered and dirty and smelled of cat urine. The landlord testified that she found that the tenant's cats had scratched the walls and damaged the carpet on the stairs. The landlord also found cat droppings, vomit and blood on the floors. Photographs confirmed that the floor was soiled and possibly damaged and showed the rental unit was messy and cluttered. The landlord served the tenant with the One-Month Notice to End Tenancy for Cause that day.

The landlord's position is that the condition described above constitutes extraordinary damage. The landlord testified that the move-in condition inspection report confirmed that, although the carpet is approximately 15 years old, it was a good quality carpet still in pristine condition when the tenant first took occupancy.

The landlord stated that she contacted a carpet-cleaning company. The landlord's carpet contractor did not physically inspect the rental unit, but apparently advised the landlord that they would not be able to guarantee that cat urine odour could be removed. The landlord believes that the tenant's cats are still urinating on the carpets because, during a recent inspection, the landlord found that the odour was still offensive and there was evidence of more cat droppings or vomit on the floor. The landlord stated that, because of the tenant's possessions stored in the unit, she was not able to inspect the flooring in obscure corners and blocked areas, but suspects that the cats have likely been using these areas instead of their litter box. The landlord believes that if the tenant stays, the carpets will need to be completely replaced.

The landlord's witness fully supported the landlord's testimony.

The tenant did acknowledge that the rental unit was cluttered with boxes that were still unpacked, as she plans to move at the end of May 2013. The tenant stated that she never received any written warnings from the landlord until suddenly served with the

One-Month Notice to End Tenancy for Cause. The tenant testified that she was not given an opportunity to address the landlord's concerns before the Notice was issued and has since cleaned up the floors..

The tenant acknowledged that the rental unit was likely in a bad state on February 2, 2013 when the landlord did the inspection. The tenant argued that that she had been in the hospital and the reason for the unclean condition is because of the fact that she had left another person who was supposed to care for her home and pets during her absence. The tenant testified that this individual failed to adequately clean or maintain the premises. The tenant testified that she was not in a position to be aware of this situation.

The tenant testified that, when she returned from the hospital, she received the termination Notice from the landlord, and immediately cleaned up the carpets and flooring. The tenant testified that she has maintained a reasonable level of cleanliness since that time. According to the tenant, her cats are now using their litter box and are not soiling the floor. The tenant denied that the rental unit still smells of cat urine.

The tenant pointed out that no physical assessment of the carpets has been done by a expert in the field and therefore she questioned the level of proof offered by the landlord that the carpets are irreparably damaged.. The tenant's position is that the landlord did not provide any independent evidence to prove that the carpets cannot be restored at the end of her tenancy through professional carpet-cleaning and specialty treatments. The tenant stated that she believes that the carpet can be restored is prepared to have the carpets properly cleaned when her tenancy is over.

Analysis

I find that section 47(1)(f) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has caused *extraordinary* damage to a rental unit or residential property.

It is the landlord's burden of proof to prove that there is valid cause under the Act to end the tenancy. In this case, I find that the onus is on the landlord to prove that extraordinary damage has been caused by the tenant that would justify terminating the tenancy.

I find that section 32 of the Act imposes responsibilities on a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While 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, a tenant is not required to make repairs for reasonable wear and tear.

I accept the landlord's and the witness's testimony that, on February 2, 2013, when the inspection was done, the rental unit was not in a satisfactory condition and the tenant was not likely meeting her responsibilities under section 32 of the Act at that time.

That being said, I find that the landlord issued the One-Month Notice to End Tenancy for Cause immediately after the February 2, inspection without first giving the tenant an opportunity to rectify the damage and in the absence of any previous written warning.

While I accept that, on a balance of probabilities, odours were caused by the fact that the cats had been neglected and used the floor, instead of their litter box for a time, I do not find this fact to be conclusive proof that the continued presence of this odour shows that the tenant's cats had continued to urinate on the floor after February 2, 2013. In fact, I find that the original odour that was initially detected on February 2, 2013, would likely still be present, since no professional cleaning of the carpets has ever been done since that time and the odour will likely remain until subjected to a thorough cleaning .

Although the landlord verbally alleged that the carpets are, or will be, ruined, this allegation was refuted by the tenant. Other than the testimony of the landlord and witness, I find that insufficient evidence was offered to verify that the carpets have been, or will be, permanently damaged.

For the reasons stated above, I find that the landlord has not successfully met the burden of proof required to terminate the tenancy for cause.

The parties are reminded that, under section 37 of the Act, a tenant must leave the rental unit reasonably clean and undamaged at the end of the tenancy, failing which the landlord will have an opportunity to make an application for dispute resolution claiming compensation for costs or damages.

Based on the evidence and the testimony, I grant the tenant's application and hereby order that the One-Month Notice to End Tenancy for Cause be cancelled and of no force nor effect.

I find that the tenant is entitled to be reimbursed for the \$50.00 cost of this application and may deduct this amount from the next rental payment owed to the landlord.

Conclusion

The tenant was successful in the application and the One-Month Notice to End Tenancy for Cause is cancelled.

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 06, 2013

Residential Tenancy Branch

