



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hartin Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, RP, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49
2. An Order for repairs - Section 32; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

In its application the Tenant claims replacement of the carpet as repairs. The Tenant states that the carpet is at least 15 years old. The Tenant states that the replacement of the carpet will resolve a problem with the flooring.

Rule 2.3 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure requires that claims made in an application must be related to each other. As the primary matter in dispute is whether or not the tenancy ends and although the dispute involves the flooring, repairs to a carpet are not related to the end of the tenancy and I dismiss this claim with leave to reapply.

The Tenant states that it did not receive the Landlord's evidence package until July 16, 2016 and asks that the evidence be excluded from consideration. The Landlord states

that they tried unsuccessfully to serve the Tenant personally with the evidence in July 2016 and finally placed the evidence in the Tenant's mailbox on July 11, 2016. It is noted that the Landlord's evidence package was provided to the RTB on July 13, 2016.

Rule 3.15 of the RTB Rules of Procedure provides that a respondent's evidence must be served on the applicant as soon as possible and no less than 7 days in advance of the hearing. Although the Landlord's evidence is that their evidence package was served on July 11, 2016 I note that it was only placed in the Tenant's mailbox. Further, the evidence that the Landlord seeks to rely on is evidence to support the notice to end tenancy and this evidence should have reasonably been available before the notice to end tenancy was served as this evidence would have to have been known in order to serve the notice to end tenancy. In these circumstances I find that the Landlord failed to serve the Tenant with its evidence package as soon as possible and unreasonably delayed its provision to the Tenant causing prejudice to the Tenant. I therefore decline to consider this evidence.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in 2002. Rent of \$1,010.00 is payable monthly. On May 31, 2016 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use (the "Notice").

The Landlord states that the reason for the Notice is that the floor in the Tenant's floor requires repair due to damage that occurred due to previous water damage. The Landlord states that the concrete layer is crumbling and there is concern that the subfloor is also damaged. The Landlord states that a visual inspection has taken place however a proper assessment requires the removal of the carpet and concrete. The Landlord states that some of the concrete can be seen cracked. The Landlord states

that while they expect the worst in terms of the subfloor, this cannot be determined until the assessment takes place. The Landlord states that the assessment requires the unit to be vacant as the whole floor requires assessment and all the carpet has to be removed at the same time. The Landlord cannot provide a timeline for the assessment. The Landlord states that until the full extent of the damage is determined they cannot know timeline for the repairs although they are expecting the worst. The Landlord states that no permits are required for the repairs.

The Tenant states that the floor can be inspected one room at a time and that furnishings can be moved into other rooms for each room inspection. The Tenant is willing to accommodate the Landlord for the assessment. The Tenant states that the Strata informed the Tenant that other units on the same floor had a similar problem and that the repairs were done in a matter of days. The Tenant states that the great majority of the problem lies with the carpet and that there are only cracks in the kitchen and entrance areas. The Tenant states that nobody walked through the unit to inspect the floors.

Analysis

Section 49 of the Act provides that a landlord may end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to, inter alia, renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Given that the Landlord has not even assessed the floor for the extent of damage and therefore the length of time for repairs, considering that there is no evidence of the time required for the assessment itself and accepting the reasonableness of the Tenant's evidence that each room can be assessed individually without requiring vacancy, I find that the Landlord has not substantiated that the unit needs to be vacant for any period of time. As such I find that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

Although the Tenant's claim for replacement of the carpet was dismissed with leave to reapply, in the interim and accepting that the Landlord has the good faith intention to remedy the floor problem that requires the removal of the carpet for assessment purposes, I direct the Landlord to consider Policy Guideline #40 "Useful Life of Building Elements" in relation to the carpet.

As the Tenant's claim to cancel the Notice has been successful I find that the Tenant is entitled to recovery of the filing fee and the Tenant may deduct \$100.00 from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and of no effect.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 22, 2016

Residential Tenancy Branch

