Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR, FF

Introduction

The landlord applies for rent claiming the tenants gave insufficient notice to end their tenancy. She also seeks the cost of carpet cleaning and gas utility costs.

The respondent tenant Mr. R.P. did not attend the hearing on either day. His co-tenant Ms. J.R. confirmed that he was aware of the proceeding.

Both parties attending the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenancy end as a result of the Notice or through “frustration” as argued by the tenant? What amount of the gas bill are the tenant’s responsible for? Were they responsible for the cost of professional carpet cleaning before they left?

Background and Evidence

The rental unit is a three bedroom suite in the lower portion of a house. The tenancy started in September 2015. The tenants vacated on February 29, 2016 and a move out condition inspection was conducted on March 1.

The monthly rent had bee $1050.00. The landlord returned the tenants’ full deposit within fifteen days after February 29 and brought this application March 17.

It is not disputed that there was water ingress into the home in November 2015. The living room carpet became wet in a small area. The landlord told the tenants to keep an eye on it.

There was another minor water incident in December.

In mid February there was significant water ingress. Half of the carpet in Ms. J.R.'s bedroom became soaked. In the other two bedrooms a portion of the carpet along the exterior wall became soaked for a width of about a foot or two.

The landlord immediately retained workmen to conduct restoration. By that time the tenants, formerly a couple, had parted. The tenant Mr. R.P. who was employed, was living elsewhere. The tenant Ms. J.R. was unemployed.

Ms. J.R. moved most all her belongings in her bedroom to facilitate the work. Parts of the underlay of the carpets were removed and blower machines were brought in on or about February 16.

The renovators removed portions of wall in each bedroom up to a height of about 700 centimeters so as to facilitate drying, exposing bare concrete.

The landlord says the tenant delayed the work by making it difficult for the workers to schedule work times.

The tenant Ms. J.R. says the opposite; that she herself moved furniture and belongings that the workers should have moved. She also claims that the workers almost damaged her rare book collection and that the renovation work caused her to be ill.

During most of the work Ms. J.R. stayed elsewhere.

On February 26 the landlord received a written notice from Ms. J.R. saying that the premises were uninhabitable and that she would be moving February 29. In response the landlord told her that she would try to find replacement tenants for March 1 but if she couldn't then the tenants would be responsible for March rent.

The landlord immediately offered the premises for rent on various, usual sites on the internet. She conducted an open house for prospective tenants on February 27. Only one set of prospective tenants showed up. They did not offer to rent. She says that in mid March she secured tenants to rent from April 1st.

The move-out inspection report was unremarkable.

The landlord points to the tenancy agreement which says that if the carpets were professionally cleaned before the tenants moved in then the tenants must have them professionally cleaned when they move out. She says the carpets were not professionally cleaned before this tenancy but they were new. She refers to a quote from a carpet cleaning company giving a cost of $283.50 for the professional cleaning.

The carpets were not noted in the condition inspection report as requiring cleaning and the landlord does not alleged they did.

The landlord submits a Fortis gas bill in the amount of $165.00, as a monthly installment. The tenancy agreement requires the tenants to pay 30% of the bill.

The tenant Ms. J.R. argues that since the premises flooded February 16 and she stayed elsewhere for most of the rest of the month, she shouldn't be responsible for the full bill.

Analysis

March Rent

Having regard to all the circumstances I find that the tenants were not entitled to declare the tenancy as "frustrated" and to move out.

Residential Tenancy Policy Guideline 34, "Frustration" states,

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

In this case the wetting of parts of bedroom carpets and the resultant remediation work did not "totally affect the nature, meaning, purpose, effect and consequence" of the tenancy agreement. The premises were, for the most part, useable, but for the bedrooms for three nights while the carpets were drying. The tenant's argument that the remediation work or the wet carpet or concrete was making her ill, was not supported by any medical evidence and is anecdotal.

It was not argued that the landlord through act or omission was responsible for the water ingress and was therefore in breach of the tenancy agreement is some regard. However, even if it had been argued, the nature and extent of the damage and the anticipated inconvenience of remediation work would not have been sufficient to find that the landlord was in material breach of the tenancy agreement, which also might have given justification for the tenants ending it early.

In result, I find that the tenants did not have grounds for ending the tenancy early. They may well have grounds to claim compensation for loss of use of the premises or for costs associated with the inconvenience of it all, but there is no such application by the tenants before me at this time.

Once the tenants had moved, but not before then, the landlord was obliged to minimize her rental loss by trying to find replacement tenants. Residential Tenancy Policy Guideline 34, "Duty to Minimize Loss" states,

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

I find the landlord took reasonable steps to mitigate her loss. She advertised for new tenants even before the tenants vacated the property. She held an open house on February 27. I do not accept the tenant Ms. J.R.'s contention that the landlord was not eager to find new tenants because she would claim the March rent from the respondent tenants. A landlord in Ms. M.B.'s position would more likely be eager to find replacement tenants who would immediately pay her March rent, rather than take her chances by hoping to collect it from the respondent tenants after a dispute hearing and the collection process of a monetary order.

The tenants were not entitled to end the tenancy because of the water ingress and remediation work. The landlord is entitled to recover March rent and I award her $1050.00.

Professional Carpet Cleaning

I dismiss this claim for two reasons.

First, the *Residential Tenancy Act* (the "*RTA*") sets the standard of cleanliness a tenant must meet at the end of the tenancy. The tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear" (s. 37(2)(a)). The provision in this tenancy agreement requiring "professional cleaning" no matter the condition of the carpets, is a deviation from the standard set by the legislation. Section 5 of the *RTA* prohibits the avoidance or contracting out of the *RTA* and so the clause requiring professional carpet cleaning regardless of the carpet's condition is not enforceable.

Secondly, the landlord had the carpets cleaned but failed to give evidence of the cost of that cleaning. She provided only a quote from the company she used. She could not recall that cost at the hearing. She says she lost the receipt. Duplicate receipts are easily available. Her credit card receipt or other evidence of payment are easily obtained. The cost of the actual cleaning is the true measure of her damages and she has failed to prove it.

The Gas Bill

I allow this claim in the amount of $49.50, being 30% of the bill presented. The tenant Ms. J.R.'s argument must fail because the bill rendered by the gas company is for gas provided to February 15, 2016. No part of it is for gas provided after the water ingress and remediation work.

Conclusion

The landlord is entitled to a monetary award of $1099.50 plus recovery of the $100.00 filing fee for this application. She will have a monetary order against the tenants in the amount of $1199.50.

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: August 16, 2016

Residential Tenancy Branch