



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPC MNSD FF
	Tenant:	CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was received at the Residential Tenancy Branch on August 18, 2016 (the “Landlords’ Application”). The Landlords applied for the following relief pursuant to the *Act*:

- an order of possession based on a 1 Month Notice to End Tenancy for Cause, dated July 30, 2016 (the “1 Month Notice”);
- an order permitting the Landlords to keep all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was received at the Residential Tenancy Branch on August 9, 2016 (the “Tenant’s Application”). The Tenant applied for an order cancelling the 1 Month Notice pursuant to the *Act*.

The Landlords were represented at the hearing by E.J. The Landlords called three additional witnesses: C.G., B.J. and F.C. The Tenant attended the hearing on her own behalf. All parties giving evidence provided their solemn affirmation.

The Landlords and the Tenant confirmed receipt of the other parties’ Notice of a Dispute Resolution Hearing and supporting evidence. During the hearing, no issues were raised with respect to the documents submitted by the parties.

The 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

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever the Landlords' claim to keep all or part of the security deposit or pet damage deposit. Accordingly, this Decision will address only the relief relating to the 1 Month Notice, and the recovery of the filing fee as appropriate. The Landlords are at liberty to reapply for the monetary relief sought at a later date.

Issues to be Decided

1. Are the Landlords entitled to an order of possession based on the 1 Month Notice?
2. Are the Landlords entitled to an order granting recovery the filing fee?
3. Is the Tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

A copy of the tenancy agreement was submitted with the Landlords' evidence. The parties agreed a one-year fixed-term tenancy began on November 1, 2011. At the end of the fixed term, the tenancy continued on a month-to-month basis. Currently, rent in the amount of \$740.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$337.50 at the beginning of the tenancy.

On behalf of the Landlords, E.J. provided evidence in support of the 1 Month Notice, which was issued on the basis that the Tenant had caused extraordinary damage to the rental unit or had breached a material term of the tenancy agreement.

E.J. testified the rental unit was refurbished when the Tenant moved in. New carpets had been installed and the rental unit had been painted. However, E.J. described the damage to the rental unit as "extensive...not a pretty sight". Photographic evidence submitted by the Landlords depicts unclean living conditions in the rental unit. Specifically, the E.J. directed me to images of garbage throughout the rental unit, burn marks on the carpet, and dog feces and urine. E.J. testified the feces and urine have

resulted in stains in the carpet that could not be removed with professional cleaning, flies in and outside the rental unit, and a horrible smell.

E.J. further testified that industrial strength cleaners have been used in the hallway outside the Tenant's rental unit to deal with the smell, which has been the subject of complaints by other tenants in the building. E.J. also referred to multiple police and ambulance attendances, which have been disruptive to other tenants.

B.J. also provided oral testimony on behalf of the Landlords. He testified that the bad smell from the Tenant's rental unit is noticeable every time he walks by. He confirmed that he has used a strong deodorant outside the rental unit with little effect. B.J. has also sprayed for flies outside the rental unit.

In addition, C.G. provided oral testimony on behalf of the Landlord. She testified she was present at two recent condition inspections and stated the rental unit was the worst she has ever seen during her 30 year career as a property manager. C.G. stated the rental unit smelled so bad she had to leave during the inspection.

The Tenant was asked specifically why she believes the 1 Month Notice should be set aside. In reply, the Tenant testified to her belief the whole matter is "crazy". She stated that she has cancer and stays in bed for 99% of the day, although she does manage to take her dog for a walk. She stated she has not done anything wrong, and that her dog is fine. The Tenant testified that she has a friend come in to clean for her every 2 weeks. The Tenant wishes to remain in the rental unit.

In response, C.G. testified that the Tenant is seen to be up and about much more than stated. C.G. also stated her opinion that the Tenant is no longer capable of taking care of herself or the rental unit, and denies anyone cleans the apartment on a regular basis.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 47 of the *Act* permits a landlord to end a tenancy if "the tenant has caused extraordinary damage to a rental unit or residential property."

The photographic evidence submitted by the Landlord, which I accept, depicts burn marks, urine and feces stains on the carpet of the rental unit. These marks persisted after being professionally cleaned, as did the associated odour. I find that the damage

described by the Landlords constitutes extraordinary damage beyond that of normal wear and tear.

I am supported in this conclusion by section 32(2) of the *Act*, which states:

“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.”

In light of the above, I find the Tenant has caused extraordinary damage to the rental unit. Accordingly, I uphold the 1 Month Notice and grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

As the tenancy is ended on the basis of extraordinary damage to the rental unit, it is not necessary for me to consider whether or not there has been a breach of a material term of the tenancy agreement.

As the Landlords' Application is successful, I award \$100.00 as recovery of the filing fee, which I order may be deducted from the security deposit.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: September 30, 2016

Residential Tenancy Branch