



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, OLC, ERP, RP, LRE, RR, FF

Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on July 21, 2016, compensation for damage or loss under the Act, an order the landlord comply with the act, make emergency repairs and repairs, that conditions be set on the landlords' right to enter the rental unit, that rent be reduced for repairs, services or facilities agreed upon but not provided and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the tenants' evidence. The tenant supplied a considerable number of pages of evidence, unnumbered. That evidence was supplied to the landlord within the required time limit.

The tenant confirmed receipt of the landlords' 24 page evidence submission, given less than seven days before the hearing. The tenant did not dispute reference to the landlords' late evidence submission.

Section 2.3 of the Residential Tenancy branch Rules of Procedure provides:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I determined that the Notice to end tenancy and possible end of tenancy was not sufficiently related to the remaining claims set out on the application. Therefore, the

hearing proceeded to consider the one month Notice to end tenancy for cause; the balance of the claim is dismissed with leave to reapply within the legislated time limit.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on July 21, 2016 be cancelled or must the landlord be issued an Order of possession?

Background and Evidence

The current tenancy for a condo in Vancouver commenced July 1, 2016 and is a fixed-term to June 30, 2017 at which point the tenant must vacate the rental unit. The parties have signed tenancy agreements on an annual basis since January 2013. Rent is \$3,267.00 due on or before the first day of each month.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on August 31, 2016. The tenant received the Notice sent via registered mail on July 22, 2016 and applied to dispute the Notice within the required 10 days.

The reason stated for the Notice to End Tenancy was:

“tenant has caused extraordinary damage to the unit/site or property/park.”

The landlord stated that the tenant removed carpeting from the rental unit and painted the ceilings grey without his prior permission.

The carpet was in satisfactory condition at the start of the tenancy. When the current tenancy agreement was signed in June 2016 the landlord agreed to have the rental unit painted. The landlord also agreed to have the carpet replaced. The tenant wanted laminate rather than carpet. The landlord had agreed to replace the carpet with either laminate or carpet.

The landlord was not certain of the date he went to the rental unit; he believed it was mid-July 2016. The tenant said the landlord came to the unit on July 12, 2016. On that date the landlord had painters commence painting the unit. When the landlord arrived he discovered that the tenant had cut and removed a strip of carpet around the border of the walls.

The landlord said he told the tenant that she should not have cut the carpeting. No other instructions or direction was given to the tenant by the landlord.

When the landlord left the rental unit on the date painting commenced he did not return or have any other contact with the tenant until the Notice to end tenancy was issued. The landlord explained that the tenant is disagreeable and not an easy person to deal with so he declined to have any further contact with the tenant.

The landlord was notified by a July 18, 2016 email from the tenant that the carpet had been removed. The landlord said he could have used the carpet in other rental properties that he owns. The disposal of the carpet annoyed the landlord and at the time the carpet was cut it was not known if laminate would be allowed by the strata. The tenant had not been given permission to cut or remove the carpet and the strata council not provided permission for laminate flooring.

By removing the carpet the tenant has caused extraordinary damage to the rental unit. The tenant also painted the ceilings in the unit grey.

The landlord supplied a copy of the condition inspection report, photographs taken of the unit showing the carpeting that had been cut and the state of the rental unit when it was vacant.

The tenant referenced an email sent to the landlord on April 5, 2016 in which the tenant wrote:

"I keep to my word, I said I would remove the carpet and I will do that for you. That will save on cost. Once removed they can paint so nothing gets on the new floor."

(Reproduced as written)

The tenant said she talked to the landlord on July 9, 2016 and told him the carpet had been cut in preparation for the painters and that the landlord had said that was great. The tenant said the carpet was 18 years old.

The landlord pointed to an email sent by the tenant on July 18, 2016 in which the tenant stated she would continue to "do the trim and remove the carpet." The tenant wrote that she "never signed up to the painting or floor removal." The landlord suggested these comments contradicted the April 5, 2016 email and that there was no agreement the tenant could remove the carpet. The landlord said that after he received the April 5, 2016 email he told the tenant to leave the carpet.

The tenant said that when the landlord came to the unit on July 12, 2016 he said nothing about the cut carpet. The painters came to the unit over the next week during which time the tenant made them lunch and ensured they had room to complete the work. The tenant did not ask the painters to move heavy furniture as suggested by the landlord.

The tenant said that there had been agreement the carpet would be replaced and that she cut the carpet to make it easier for the painters. Once the carpet was removed it was placed under plastic at the door to the unit; where it remains. The tenant supplied photographs of the state of the home and the carpet. Carpet remains in the bedrooms.

The tenant said that she did not paint the ceilings grey; the landlord supplied the paint and his contractors completed the painting. The tenant said that a closet, the den,

storage area and trim have yet to be painted. The tenant completed the painting in the kitchen.

As the flooring work had not proceeded and the painting was not fully completed the tenant began to make attempts to reach the landlord by phone and email. The landlord confirms he did not respond and in fact he reported to the tenant to the police. The police contacted the tenant. The tenant said the police referred her to the Residential Tenancy Branch. The landlord said he felt insulted and hurt by the tenants' actions.

The tenant said that she understood the flooring would be replaced the week after the painting was completed. The tenant supplied evidence of strata approval for laminate and communication with the landlord in which the tenant assisted in obtaining flooring quotes. The tenant said she and the landlord had extensive communication about the type of flooring that would be installed.

The tenant said she does not understand why the landlord has issued the Notice to end the tenancy; she completed research for the landlord and they had an agreement. Otherwise it would not make sense to rip up the carpet as the unit is not hers. The tenant said she has never been rude to the landlord and she is appalled at the accusation.

The landlord said that he had offered new carpeting but the tenant was insisting on laminate.

Analysis

The landlord has the burden of proving the reasons on the Notice to end tenancy. After considering all of the evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reason given on the Notice ending tenancy.

From the evidence before me I find on the balance of probabilities that there was agreement the flooring would be replaced and that the landlord had been informed the carpet would be removed by the tenant. This appears to have been a tenancy where the parties had a positive history and the efforts made by the tenant to obtain quotes and prepare for the painting by cutting the carpet support that. As explained during the hearing, the type of flooring that was to be installed is not relevant. What I find relevant is that there was agreement the carpet would be replaced and the landlord had not responded to the April 5, 2016 email to provide other direction regarding the carpet removal. The tenant told the landlord she would remove the carpet and that is what she did.

There was no evidence before me that the landlord responded to the tenant, directing her not to remove the carpets and no record of any verbal conversation. When the landlord attended at the rental unit on July 12, 2016 he failed to give the tenant any instructions regarding the carpet and I find it more likely than not that he failed to say

anything to the tenant about the cut carpet. I have also reached this conclusion based on the silence of the landlord after July 12, 2016. He did not arrange installation of the flooring; he did not communicate with the tenant in any way and rejected her attempts to communicate. The only action the landlord took was to call the police and issue the eviction Notice. I found this absence of communication unusual as the tenant was not given any indication that she had done anything wrong, which left her confused and resulted in her repeated attempts to reach the landlord.

Therefore, I find that the tenant cannot be faulted for removing the carpet and that she did so after informing the landlord, who has not convinced me he directed the tenant to do otherwise.

In relation to the ceiling painting, I find that it was the landlords' contractor who painted the ceilings with paint supplied by the landlord. The tenant cannot be faulted.

Therefore, I find the one month Notice to end tenancy for cause issued on July 21, 2016 is of no force and effect and that it is cancelled. The tenancy will continue until it is ended in accordance with the Act.

As the application has merit I find that the tenant is entitled to deduct the \$100.00 filing fee cost from the next months' rent due.

Conclusion

The one month Notice to end tenancy for cause issued on July 21, 2016 is of no force and effect and is cancelled. The tenancy will continue until it is ended in accordance with the Act.

The tenant is entitled to filing fee costs.

The balance of the application is dismissed with leave to reapply.

This decision is final and binding and 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 22, 2016

Residential Tenancy Branch