Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MND, MNDC, MNSD, OPC, FF

Introduction

This was a cross application hearing.

On August 29, 2016 the tenants applied to cancel a one month Notice ending tenancy for cause issued on August 26, 2016 and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

On September 19, 2016 the landlord applied requesting an order of possession based on cause, compensation for damage to the rental unit, damage or loss under the Act, to retain the deposit, and to recover the filing fee cost.

On October 3, 2016 the landlord submitted an amended application increasing the monetary claim from $2,800.00 to $5,449.40.

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 provided.

Preliminary Matters

The landlord was informed that the monetary claim would be considered, depending upon the outcome of the Notice to end tenancy. If the Notice was found to be of force and effect the hearing could be adjourned to consider the monetary claim. The monetary acclaim will be addressed in the analysis section of this decision.

The landlord claimed costs for flooring and a door ($1,649.40); an unidentified “monetary loss ($2,800.00) and a damage deposit ($900.00.)

Issue(s) to be Decided

Should the one month Notice to end tenancy for cause issued on August 26, 2016 be cancelled or is the landlord entitled to an order of possession?

Background and Evidence

The tenancy commenced on February 17, 2016 as a fixed-term to March 1, 2017 at which point the tenancy will continue on a month-to-month term. A copy of the tenancy agreement indicates that the parties initialed the section of the application that requires vacant possession at the end of a term; however the box checked setting out the term indicates the tenancy coverts to a month-to-month term.

A security deposit and pet deposit in the sum of $700.00 and $200.00; respectively were paid.

The landlord served the tenants a one month Notice to end tenancy for cause by posting it to the door on August 26, 2016. The tenants confirmed receipt of the Notice on August 29, 2016. The tenants disputed the Notice on that date.

The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has:

- put the landlord's property at significant risk;
- that the tenant has caused extraordinary damage to the property; and
- that the tenant has not done required repairs of damage to the unit.

The landlord stated that on August 25, 2016 a neighbour saw two people on the roof of the rental unit. The police were called. The landlord said it was the tenants' daughter and boyfriend on the roof. This resulted in a potential of serious liability to the landlord and potential serious damage to the roof that could result in a repair cost of $20,000.00

The neighbour spoke with the police who said they smelled cat urine and made comments on the poor state of the home when they attended, in response to the report of people on the roof.

The tenants were provided with the use of a hot tub. The tenants did not maintain the hot tub, resulting in the risk of bacterial infection. There was agreement that between July 18 and 22, 2016 the landlord was at the property and emptied the hot tub; it has not been used since that time.

The landlord said that when the tenants initially viewed the home they made a comment about possibly installing a cat door. The landlord said he can understand there might have been confusion as, at the time, he had responded that if the tenants purchased the home they could install a cat door. The landlord said he did not provide permission for the cat door that the tenants have now installed. The landlord said he did not want to start a battle with the tenant, as the tenant could have been confused by their earlier conversation.

The tenants were previously given verbal permission to remove the carpet in one of the bedrooms. The tenants removed the carpet as their dog had urinated on the carpet. The carpet has been disposed of. The landlord said that once the carpet was removed it became apparent that the subfloor needs to be repaired and the floor needs to be "straightened out." The landlord confirmed that was no way of knowing this work was required until the carpet was removed. The tenant only had permission to replace the carpet and has not yet replaced it.

The tenants' dog has dug holes in the backyard and some plants have been killed. The tenant had left garbage in the yard which attracted rodents. The yard is neglected and is deteriorating. The failure to remove garbage causes a risk of attracting more rodents.

The landlord said the tenant attempted to fill in the holes made by the dog and that a fence was erected in an attempt to contain the dog.

Tenant L.M. responded that she has a head injury which causes some challenges.

The tenant said that they were away and that the individuals who went on the roof were not to be in the house. The tenants know who they were and are pursuing the issue with the police. The tenants said the windows do not have locks on them.

The tenants' written submission indicated that when the police went to the door of the rental unit the people who answered were the tenants' house sitters, who confirmed with the police there was not a break-in occurring. There was a misunderstanding, not a break-in. The written submission appeared to be in conflict with testimony given during the hearing; but was not raised at the time of the hearing. The tenant said that the litter boxes are by the door to the unit and since the tenant had been away the boxes may have been dirty and noticed by the police. The tenant cleaned the boxes fully when she returned.

The tenant said that they have not used the hot tub since July 2016 and were not given detailed instructions on maintenance of the tub. The hot tub is included as a facility on the tenancy agreement.

The tenant said that the cat door was installed as the tenant was given permission to do so.

The tenant did remove the carpet and had agreed to replace the flooring. The tenant said that the landlord had wanted to install laminate and that she agreed to pay for the cost of flooring, as set out by the landlord, in the sum of $320.01.

The tenant said that all holes in the yard have been filled. The garbage was removed and the tenant recycles everything she can. The tenant did clean up garbage that had been blown around by the wind, just prior to the landlord coming to the property in July, 2016.

Analysis

The landlord has the burden of proving the reasons given on the Notice ending tenancy. From the evidence before me I can find no support for the reasons given on the Notice. The landlord set out what I find is some annoyances and misunderstandings that have occurred.

The landlord has suggested there could be a liability issue if the tenants' guests were to fall from the roof. The tenant provided conflicting evidence on the identity of the people who entered the home on August 25, 2016. A tenant is responsible for any risk posed or damage caused by a guest. However; the landlord did not suffer any loss and I am not convinced that the people present were invited guests. They may well have been the house sitters, but I do not have enough evidence before me to come to that conclusion.

I find that the hot tub is a facility offered as part of the tenancy agreement. If the tenants wish to use the hot tub I suggest the landlord provide the tenants with detailed, step-by-step maintenance instructions. The tenants will then be responsible for maintenance and purchase of the needed chemicals. The landlord has emptied the hot tub, but the tenants are at liberty to re-fill it if they are prepared to maintain the hot tub.

I find on the balance of probabilities that the tenants and landlord had reached some sort of agreement that a cat door could be installed. If not an explicit agreement, there was a meeting of the minds sufficient for the tenants to believe the door was approved. The landlord stated that he believed there could have been some confusion in relation to the door. That confusion cannot be used to support of eviction.

There was no dispute that the parties reached agreement that the bedroom carpet could be removed. A landlord is held responsible for maintenance and repair of a rental unit, but the parties have reached a mutual agreement on the cost of new flooring. Therefore, the parties are free to enact the agreement that has been made. There is no basis for the end of tenancy when the landlord has confirmed that the tenant had permission to remove the flooring and when the sub-floor requires repair before carpet or laminate should be installed.

From the evidence before me I find that there was some garbage that needed cleaning up in the yard in July; that was not in dispute. I find it is I likely wind could have caused the garbage to be strewn around the yard. There was no evidence before me that this is an on-going problem or that any risk exists.

Residential Tenancy Branch policy suggests that a tenant is responsible for routine yard maintenance such as cutting grass, snow removal and a reasonable amount of weeding. There was no evidence before me to support ending the tenancy based on the state of the yard. There was agreement that the holes have been filled in and that the tenant is making efforts to ensure the dog does not dig.

I note that section 32 of the Act provides:

Landlord and tenant obligations to repair and maintain

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) 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.

(3) 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

If there is damage caused by the tenants pet, the tenants are responsible for repair of that damage. The parties may wish to record agreements made for repair or requests for repair, in writing. Ideally written agreements should be signed by each party and a copy retained by each party.

From the evidence before me, for the reasons set out above, I can find no support for any significant risk, extraordinary damage or damage that requires repair. Therefore, in the absence of evidence supporting the reasons given on the Notice ending tenancy issued on August 26, 2016 I find that the Notice is of no force and effect. The Notice is cancelled and the tenancy will continue until it is ended in accordance with the Act.

I have applied section 2.3 of the Rules of Procedure which 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.

As the Notice ending tenancy is cancelled and the hearing dealt with the Notice only, I find that the monetary claim is dismissed with leave to reapply. Any future application for compensation may be impacted by the findings made in this decision.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenants are entitled to deduct the $100.00 filing fee cost from the next months' rent.

Conclusion

The one month Notice to end tenancy for cause issued on August 26, 2016 is cancelled.

The landlord has leave to reapply for compensation.

The tenants are entitled to filing fee costs.

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: October 24, 2016

Residential Tenancy Branch