



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONNAUGHT MANAGEMENT LTD dba CML PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF, O

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy, to recover the filing fee for this proceeding and for other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery to the Landlord's office September 11, 2017. Based on the evidence of the Tenant and the Landlord, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. What other considerations are there?

Background and Evidence

This tenancy started on July 1, 2013 as a 1 year fixed term tenancy and then continued on a month to month basis. Rent is \$990.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$470.00 on June 10, 2013. A move in condition inspection report was completed on July 1, 2013.

The Landlord's agent she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated August 25, 2017 by personal delivery on August 25, 2017. The Effective Vacancy Date on the Notice is September 30, 2017. The Tenant is living in the unit and the Landlords said they want to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has caused extraordinary damage to the unit, the Tenant has not done the

required repairs to correct the damage and the Tenant has breached a material term of the agreement and the Tenant has not corrected the breach in a reasonable period of time.

The Landlord said there are a number of incidents that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). The Landlord said they do yearly inspections of the units to see the condition of the units and to replace furnace filters. The Landlord said starting in 2014 the Tenants' unit was dirty and the Tenants' children had drawn on the walls with crayon and markers. The Landlord continued to say each year the damage to the walls increased and the Tenant did not correct the issue. The Owner of the property K.W. said he gave the Tenant paint to repair the walls and the Tenant did not repaint the walls. The owner said the walls will have to be stripped, primed and repainted to bring the unit back to a rentable standard. The Owner said they do paint units as needed but he does not want to be responsible for these additional costs. The Landlord's manager C.H. said this is extraordinary damage and is one of the reasons the 1 Month Notice to End Tenancy for Cause was issued to the Tenants.
- 2). The Landlord's manager continued to say the Tenants have also damaged the front door of the unit and it will have to be replaced at an estimated cost of \$336.00. The Landlords submitted a cost estimate for the door into evidence.
- 3). Further the Owner of the property said there is damage to the drywall in the unit and the master bedroom door is damaged and may need to be repaired or replaced.
- 4). In addition the Landlord's manager said that during the inspection of August, 2017 it was noted that the carpet was badly stained, dirty and in poor condition.

The Landlord's manager said they have submitted photographs of the unit showing the wall damage, the carpet staining, the master bedroom damage, and the generally poor condition of the rental unit. Further the Landlord's manager submitted the move in condition inspection report showing the unit in good condition at the start of the tenancy, an inspection report dated November 14, 2014 showing the unit was dirty and damaged and two letters dated October 28, 2015 and December 18, 2015 to the Tenants requesting them to clean and repair the unit.

The Landlords said the Tenants have caused extraordinary damage to the unit and they have not repaired the damage after being requested to do so in writing. The Landlords requested to end the tenancy.

The Tenant said the Landlord's claims are totally untrue but the Tenant has circumstances that have contributed to the situation. The Tenant said they have a large

family and one of their children may be autistic. As a result this child has trouble controlling himself and he draws on the walls of the rental unit. The Tenant said he cleans the walls regularly and he has done some painting in October, 2015 to repair the walls. The Tenant said they are working on helping their son to stop drawing on the walls with crayons and markers. The Tenant said he is willing to paint the unit if the Landlord will let him. In addition the Tenant said the tenancy started in July, 2013 so the unit is due for painting anytime or at the end of the tenancy.

Further the Tenant said his children do cause messes and the carpet has been strained, but he has a carpet shampooer and he has shampooed the carpet on occasion to take the dirt and stains out of the carpet. The Tenant agreed that the photographs the Landlord submitted of the walls and carpet are mostly accurate.

The Tenant continued to say the front door is dented but the door still works fine and the Landlord can use part of the security deposit to purchase a new door at the end of the tenancy.

Further the Tenant said he has patched hole in the drywall and he painted the areas that he patched. The Tenant continued to say that he has repaired the master bedroom door and he is willing to paint the unit. The Tenant said he has worked in construction for many years and he has the skills to do these repairs.

The Owner of the property said they normally hire professional trade people to do all the work to the rental units so the job is done correctly. In this situation the Owner said he agreed for the Tenant to do some painting in the fall of 2015 but the job was not done. The Owner does not want the Tenant to do the work on the rental unit.

The Tenant said in closing they have tried to work with the Landlord and they feel they have been a bit harassed by the Landlord with regards to the tenancy. The Tenant said these are painting and cleaning issues and they are not extraordinary damage so the Notice to End Tenancy should be canceled and the tenancy should continue.

The Landlord said in closing that he believes the cost to repair the unit will be around \$5,000.00 and this is extraordinary damage in his mind. The Landlord said he did not submit an estimate to support the cost estimate. The Landlords requested to end the tenancy for cause.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlord and the Landlord's agent C.H. The Landlords believe there is extraordinary damage to the rental unit because of cleaning and wall damage caused by the Tenants. The Landlord is concerned about the potential costs that the Landlord may incur to repair the unit. The Tenant said he will repair and clean the unit and the Landlord can use their security deposit to offset the costs of any damage. The Tenant said the unit is due for painting so the issues are not extraordinary damage but painting and cleaning issues.

I have carefully reviewed the evidence submitted and testimony given and I accept the Landlord's position that the Tenant's unit is maintained well below the standard that section 32 of the Act indicates, but whether this constitutes extraordinary damage is questionable. A tenant can not be evicted because the rental unit is not clean unless a safety issue is proven by the likes of a fire department or a health authority. Further the color or surface condition of the walls in a rental unit can not be grounds for an eviction as this is a painting issue. Policy guideline #40 indicates that the general life expectance of interior paint in a rental unit is 4 years. Therefore I accept the Tenants position that the unit will be due for painting and the children's markings on the wall are not extraordinary damage. This does not justify the Tenants drawing on the wall as I agree it is not appropriate behaviour but it is not extraordinary damage and does not establish grounds for to end a tenancy.

Further the Tenants may have stained the carpets and caused other miscellaneous damage to the rental unit which again is inappropriate but it does not constitute extraordinary damage. Extraordinary damage is damage that creates a health or safety risk in a rental unit or rental complex, creates damage that requires the unit to be vacated for repairs and/or makes the rental unit uninhabitable.

I find the Tenant has established grounds that the damage to the unit is not extraordinary, therefore the 1 Month Notice to End Tenancy for Cause dated August 25, 2017 is cancelled and the tenancy is ordered to continue as in the tenancy agreement.

The Landlord is at leave to make an application for compensation after the tenancy ends if the security deposit is insufficient to cover the cost of any damages.

Further section 32 of the Act says:

(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.

I accept the Landlord's evidence that the Tenants have not maintained the rental unit to the standards indicated by section 32, therefore I find the Tenant has some responsibility and I order the Tenant to bear the cost of the filing fee of \$100.00 for this application.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated August 25, 2017 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: November 29, 2017

Residential Tenancy Branch