



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC FFT OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The tenants were assisted by an advocate.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the parties testified that they have reached an agreement regarding the notice to end tenancy. The landlord cancelled the 1 Month Notice of December 11, 2019 and the tenants withdrew the portion of their application disputing the notice.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy began in December 2018. A security deposit of \$487.50 was paid at the start of the tenancy and is still held by the landlord.

The tenant seeks an order that the landlord comply with the Act, regulations or tenancy agreement. They specifically cite that the landlord is charging them the amount of \$178.00 for repairs made to the rental unit for which they feel they should not be held responsible. The landlord testified that the charge is for repairs of a damaged cabinet which they attribute to the tenants.

The parties agree that on or about October 29, 2019 the landlord performed some repairs to a kitchen cabinet when the tenant reported mold issues. The landlord gave evidence that the repairs were completed in a satisfactory method at that time. The tenants disagree and say that the repairs dealt only with the cosmetic issues and the base of the cabinet remained soft and pliable. The tenant testified that the base was soft to the touch and easily fell apart.

The tenants contacted the landlord to inform them of the need for further work to be performed. The parties were subsequently able to schedule a time for the landlord to attend the rental unit on November 14, 2019. The landlord's witness JA, was the handyman who performed the work and gave testimony that the repairs were done to a professional standard on both instances when they attended the unit. The witness said that they found that the base had crumbled and attributed it to someone touching and damaging the cabinet base. Both parties submitted photographs of the cabinet and copies of correspondence between them regarding the damage.

Analysis

In accordance with section 32 of the Act a landlord must provide and maintain residential property in a state of repair that complies with the health, safety and housing standards making it suitable for occupation. A tenant must maintain the rental unit in a reasonable standard. Section 32(3) provides that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant.

Accordingly, the tenant is responsible for repairs or the cost of repairs to the rental unit that can be attributed to their actions or negligence. In the present case I find on a balance of probabilities that the damage to the cabinets of the rental unit can be

attributed to the tenants. While I accept the evidence of the parties that there was some pre-existing conditions, I find that the damage to the baseboard of the cabinet is a result of the tenants' physically poking a hole and removing the soft materials. If the tenants found that the baseboard was soft to the touch, the reasonable response would have been to simply contact the landlord and desist from aggravating the issue. By their own testimony, it was the tenants who poked at the soft materials and caused the hole in the base of the cabinet. I do not find that the hole was caused by reasonable use but rather due to the tenants' actions after the initial repair had been attempted.

Therefore, I find that the landlord is not in contravention of the Act, regulations or tenancy agreement to charge the tenants for the cost of repairs to the hole to the base of the cabinet in the amount of \$178.00 and I dismiss the tenant's application.

Conclusion

The 1 Month Notice of December 11, 2019 has been withdrawn and is of no further force or effect. The portion of the tenants' application seeking cancellation of the notice has been withdrawn.

The balance of the tenant's application is dismissed without leave to reapply.

The landlord is authorized to make a deduction of \$178.00 from the security deposit for this tenancy. The deposit is reduced by that amount to \$309.50.

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: February 6, 2020

Residential Tenancy Branch