

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking an early end to this tenancy and to recover the filing fee paid for this application.

The tenants did not appear. However, based on the evidence of the landlord's I am satisfied that they were duly deemed served with the Application for Dispute Resolution hearing package by way of posting the package to the rental unit door.

The landlord gave evidence under oath.

Issues(s) to be Decided

Does the landlord have cause to end this tenancy without service of a Notice to End Tenancy?

Background and Evidence

The evidence shows that the rental property is a suite within a strata-titled apartment building newly constructed in December 2009. The landlord testified that they had a short-term tenant for the period December to March 2009. During the course of that tenancy there were no complaints regarding bed bugs. The Condition Inspection Report prepared at the end of this first tenancy shows that the rental unit was clean, there were no damages and there was no mention of bed bugs. As a result of the good condition of the rental unit that tenant's entire security deposit was returned to him.

The current tenancy began in March 2009. Approximately 3 months after move-in the tenants began complaining about bed-bugs. The landlords engaged the services of Orkin Pest Control who advised that treatment was required. The landlord testified that

Orkin advised the tenant that he must remove his infested furniture in order to have a successful treatment. The landlord testified that the tenants have consistently refused to properly pack and remove their furniture and therefore treatment has not been undertaken. The landlord testified that they had a hearing with these tenants on June 1, 2010 about this same issue. That hearing was convened upon application by the tenants who were seeking, amongst other things, to dispute a Notice to End Tenancy given for Cause by the landlord and seeking compensation for damages as a result of the bed bug infestation. At that hearing the tenants gave evidence that they had no knowledge of the reason the landlord had issued the Notice to End Tenancy for Cause. The tenants submitted that they only discovered the reason at the hearing. The dispute resolution officer found that the landlord failed to establish that the tenants were advised that their furniture must be packed, sealed and removed to allow bed-bug treatment and the dispute resolution officer cancelled the Notice to End Tenancy. The landlords maintain that the tenants were always aware but submit that there is now no doubt that they are aware as it is set out in the decision of June 1, 2010. In addition the landlords submit infestation reports from Orkin delivered to the tenants, dated June 14, 2010 stating in part:

Inspection of Unit #1134

The results of this inspection show a large infestation of bed bugs in both bedrooms and furniture.

A chemical treatment of this unit by pest control is needed as soon as possible to control the bed bug population and to prevent further spreading to other apartment units.

Please prepare room according to the "Bed Bug Treatment Preparation" Guide.

As a severe infestation was observed on top of each mattress, it is advisable to discard each bed from the unit.

(reproduced as written)

The landlords submitted a letter dated June 17, 2010 sent to them by the Strata Corporation's Agent stating in part:

We are writing on behalf of the Council for Strata Plan BCS 3011, Brentwood Gate West.

Please be advised that following the inspection to your suite performed on June 11, 2010 (initially scheduled for May 28, 2010) we have been informed by Orkin Pest Control that there is a large infestation with bed bugs within your strata lot. The furniture within each bedroom is no salvageable. It is riddled with fecal spotting and blood dropping and it is very unsanitary. As this can become a health concern not only for the tenant in the unit but for the entire building, it is recommended that you discard of the affected mattresses, ,linens and bed frames and provide access to Orkin Pest Control to perform the required treatment, immediately.

Should you not comply with this request all resulting damages and costs will be charged back to the unit owner.

(reproduced as written)

The landlords submitted a further report from Orkin dated June 23, 2010 stating in part:

Spoke with owner of suite and tenant about treatment preparation.

Tenant not willing to dispose of any furniture. This is a concern because the furniture is very infested and the risk of re-infestation will be far greater than if the furniture was disposed of.

No guarantee will be given if bed and couches remain in the suite after treatment.

(reproduced as written)

The landlords submit that the tenants are refusing to take the appropriate steps to allow the landlord to have the rental unit treated. The landlord says that the tenants insist they did not bring the bed-bugs onto the rental property and they are suing the landlords for damages for compensation for loss of their furnishings which will be heard sometime in August. The landlords say the tenants are causing damage to their property and they are causing a risk to other occupants of the rental building.

Legislation

Application for order ending tenancy early

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy

Analysis

As set out above, the Act allows a landlord to make application to end a tenancy early without service of a Notice to End Tenancy when it would be unreasonable and unfair to both the landlord and the other occupants of the residential property to wait for a notice to end tenancy for cause to take effect.

The evidence shows that this rental unit was of brand new construction in December 2009. When the first tenancy ended in March 2009 a move-out Condition Inspection Report was prepared. There is no mention on that report of any damages or any problems with bedbugs. However, within 3 months of the start of this tenancy a bedbug infestation becomes apparent. Therefore, based on a balance of probabilities, I find that it is likely that these tenants brought the bedbugs to the rental unit. However, despite the acknowledgement of both the tenants and the landlords that there is a bedbug problem, the evidence shows that the tenants have repeatedly failed to take steps to allow the problem to be rectified. The landlords have now received a letter from their Strata Council demanding that the matter be dealt with immediately and warning the landlord that he must rectify the problem or face further charges for damages and repair costs.

I find that the tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord and/or other occupants and they have put the landlord's property at significant risk such that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

Conclusion

I will allow the landlord's application to end this tenancy early and grant the landlord an immediate Order of Possession. This means that immediately upon service of a copy of the Order of Possession on the tenants they must vacate the premises. If the tenants do not vacate the premises this Order of Possession may be filed and enforced as an Order of the Supreme Court of British Columbia.