



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, ERP, OPC, FF

Introduction

This hearing dealt with cross applications. The tenant had applied to cancel a Notice to End Tenancy for Cause and more time to make the application. In addition, the tenant requested Orders requiring the landlord to make emergency repairs. The landlord applied for an Order of Possession for cause and recovery of the filing fee paid for this application. Both parties were represented at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party. I was satisfied the landlord's evidence had been sufficiently served upon the tenant and considered it in making this decision.

As a preliminary issue I noted that the tenant filed this application more than 10 days after receiving the Notice. The Act permits a Dispute Resolution Officer to grant more time to make an application under section 66 of the Act. The tenant's agent explained that upon receipt of Notice to End Tenancy the tenant contacted the Residential Tenancy Branch and was informed of the \$50.00 filing fee. The tenant is on income assistance and did not have the funds to pay the filing fee. Rather, the tenant and the landlord's manager made an agreement for the tenant to clean up the rental unit and fumigate the rental unit. When the tenant's agent learned of this the agent assisted the tenant with filing this application and requesting a fee waiver. Having heard the landlord confirm that an agreement was reached with the tenant after the Notice was issued I accepted the tenant's agent's version of events and I found an extension of time was warranted in this case.

Issues(s) to be Decided

1. Should the Notice to End Tenancy for Cause be upheld or cancelled?
2. Is it necessary to issue Orders for emergency repairs to the landlord?

Background and Evidence

I was provided undisputed evidence as follows. The one-year fixed term tenancy began May 1, 2010 and the tenant is required to pay rent of \$900.00 on the 1st day of every month. In early September 2010 the tenant or the tenant's agent notified the landlord's manager of bed bugs in the rental unit. On September 10, 2010 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) with an effective date of October 31, 2010. The Notice indicates the reasons for ending the tenancy are as follows:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenant's rental unit is very dirty and unsanitary. the landlord is of the position the tenant is responsible for bringing bed bugs into the unit. Upon enquiry, the landlord stated that only one other unit has signs of a bed bug infestation and that unit is occupied by a friend of the tenant.

The landlord asserted that the manager had verbally instructed the tenant to clean up the rental unit on several occasions after entering the unit for monthly fire alarm testing. The landlord acknowledged that a written warning had not been issued to the tenant before issuing the Notice and that the first written communication from the manager about the condition of the rental unit was on October 1, 2010. The landlord further testified that after issuing the Notice the manager and tenant had reached an

agreement whereby the tenant would clean up the unit and have the rental unit fumigated on or about September 24, 2010. The tenant subsequently cancelled the fumigation appointment.

The tenant's agent pointed out that bed bug infestations are not necessarily connected to one's cleanliness. The tenant's agent has not personally been in the rental unit and could not testify as to the condition of the rental unit; however, the agent pointed out that the manager had not documented an unclean condition upon the monthly fire alarm testing. The agent confirmed the tenant cancelled the fumigation appointment as the tenant's agent stepped in and informed the landlord and tenant that it is the landlord's responsibility to fumigate rental units.

Provided as documentary evidence by the landlord are copies of the tenancy agreement; the Notice, the October 1, 2010 warning to the tenant, and written statements from other tenants confirming they do not have bed bugs in their units.

Analysis

Upon hearing the reason for issuing the Notice from the landlord I am satisfied the tenant has not engaged in illegal activity and the second reason indicated on the Notice is without merit.

The issue for me to determine with this decision is whether the tenant has put the landlord's property at significant risk. The landlord has the burden to provide sufficient evidence that the tenancy must end for this reason. The landlord has asserted that the property is at significant risk due to bed bugs in the rental unit and the presence of bed bugs is undisputed by the tenant. The landlord also asserts that the rental unit is unclean and unsanitary.

Section 32 of the Act requires that a tenant maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property to which the tenant has access. Based upon the evidence before me, I am satisfied that the condition of the rental unit may not meet these requirements. However, I find that failing to maintain the rental unit to this standard is not necessarily grounds to find the tenant has put the landlord's property at significant risk. Rather, I find that in order to justify ending the tenancy without prior written warning there must be sufficient evidence that the rental unit is significantly or severely unclean and unsanitary. In this case, I find the lack of written documentation, photographs or written warnings to the tenant before the Notice was issued to the tenant is not sufficient to establish this tenancy should end at this time. Therefore, I cancel the Notice with the effect that this tenancy continues.

The tenant had requested emergency repairs with respect to bed bug infestation and fumigation. Section 33 of the Act provides for the definition of emergency repairs and I find a bed bug fumigation does not meet the definition of an emergency repair. Therefore, I dismiss this portion of the tenant's application.

In accordance with the authority afforded me under the Act, I issue the following ORDERS to the parties to resolve this dispute:

1. The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit at all times.
2. The landlord will inspect the rental unit on Tuesday, November 9, 2010 for the purpose of determining whether the tenant has met the standards described in part 1 above. The landlord will give the tenant 24 written notice stating the time the inspection is to take place.
3. If the landlord determines the rental unit does not meet the standard set out in part 1 above, the landlord is at liberty to gather evidence to support those findings, such as photographs, and is at liberty to issue another 1 Month Notice to End Tenancy.

4. If the landlord determined the rental unit does meet the standards set out in part 1 above the landlord must commence actions to have the rental unit fumigated for bed bugs. In addition, the tenant must comply with the instructions given to her with respect to preparing for and accommodating bed bug treatments.
5. The landlord is authorized to enter the rental unit once per month to determine the cleanliness and sanitary standards in the rental unit and this inspection does not have to be combined with other reasons for entering the rental unit. For instance, the landlord does not have to combine the cleanliness inspection with the monthly fire alarm testing and is at liberty to schedule different dates for these different purposes. The landlord must either obtain the tenant's consent or give a written 24 hour notice before entering the rental unit.

I make no award to the landlord with respect to recovery of the filing fee.

Conclusion

The Notice to End Tenancy issued September 10, 2010 has been cancelled. With this decision both parties have been given Orders by a Dispute Resolution Officer to remedy this dispute.

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 03, 2010.

Dispute Resolution Officer