



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that he received the landlord's 1 Month Notice to End Tenancy for Cause on March 25, 2011 (the Notice), when he found it placed under his door. The landlord's representative at the hearing confirmed that the tenant handed him a copy of his dispute resolution hearing package on March 30, 2011. I am satisfied that both parties received these documents and that they served one another with their hearing packages in advance of the hearing.

Issues(s) to be Decided

Is the tenant entitled to cancellation of the landlord's Notice to End Tenancy for Cause?
Should an Order be issued to the landlord requiring repairs to the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and notices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

This month-to-month tenancy for a small rental unit within a hotel commenced on June 11, 1994. Monthly rent is set at \$386.50. The landlord retains the tenant's \$167.50 security deposit paid on June 11, 1994.

The landlord's agent (the landlord) entered into written evidence a copy of the landlord's 1 Month Notice to End Tenancy for Cause issued on March 25, 2011. In that Notice,

requiring the tenant to end this tenancy by April 30, 2011, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord entered written evidence, including various witnessed statements, photographs of the tenant's rental unit, and notices of violation from the municipality's By-Law Administration Office and Fire and Rescue Service's Office that required action to correct problems with excessive amounts of debris in the tenant's rental unit. In the March 14, 2011 letter from the By-Law Administration Office, the landlord was advised that "there is evidence of pest infestation" in the tenant's rental unit and that professional pest control action was required within 30 days.

The landlord provided undisputed testimony that he provided the tenant with ample notice that pest control experts would be attending his rental unit the day before this hearing. He testified that the tenant had not followed the instructions provided regarding the preparation for the spraying of his rental unit. He said that the continuing clutter and possessions in the tenant's rental unit present challenges to the landlord and the pest control company to effectively deal with the bedbug problem that the landlord claimed was rampant in the tenant's rental unit.

In the tenant's application for dispute resolution, he requested "that the landlord repair the trap under the sink, as is required by the landlord's duty to conduct repairs." The landlord testified that when he attempted to examine the repair issue under the tenant's sink he came across 20 to 30 live bedbugs. The landlord testified that he cannot conduct these repairs safely until the pest control spraying has been completed and the tenant has taken adequate measures to allow the pest control spraying to be effective.

The landlord testified that he and tenants in the building have seen bedbugs emerging from the tenant's rental unit on a number of occasions. The landlord said that the poor condition of the tenant's housekeeping is a danger to other tenants in the building. He said that there has been a serious bedbug problem in the building for some time and that it is difficult to treat this problem in the tenant's rental unit because of the excessive material and debris that he keeps in his rental unit. He testified that the pest control

company almost refused to spray the tenant's rental unit and are scheduled to return in another week for a second spraying.

The tenant's agent and the landlord agreed that the tenant has taken some action to address concerns registered by bylaw and fire department officials regarding this rental unit. The tenant's agent said that a community service agency assisted the tenant in cleaning up his rental unit and removing some of the debris and material. He also said that the tenant and that community agency are committed to clean and maintain the tenant's rental unit on an ongoing basis. The tenant's agent submitted photographs before and after the community agency conducted their clean-up of the rental unit.

The tenant's agent also noted that the landlord unsuccessfully attempted to end this tenancy by way of a 2 Month Notice to End Tenancy for Landlord's Use of the Property in January 2011. He noted that I issued a decision on February 23, 2011 to cancel the landlord's 2 Month Notice. The tenant's agent observed that the landlord did not raise concerns about the tenant's maintenance of his rental unit in the context of that application or at that hearing.

Analysis

The only matters before me in this hearing are the tenant's application for cancellation of the landlord's Notice and repairs to the trap under the sink.

With respect to the repair issue, I accept the landlord's testimony that he is unable to conduct these repairs safely until the bedbug infestation in the landlord's rental unit has been addressed by the pest control company. I am satisfied that the landlord is taking adequate measures to address the pest control problem. I order the landlord to conduct the repairs to the trap once the pest control problems in this rental unit have been resolved.

The onus is on the landlord to demonstrate that the grounds identified in his Notice entitle him to end this tenancy. As outlined above, he identified three separate grounds for issuing the Notice.

At the hearing, the tenant's agent asked the landlord to identify which material term of the tenancy agreement the landlord cited in his Notice. The landlord admitted that there is no tenancy agreement in place for this tenancy. Since there is no tenancy agreement and the landlord was unable to provide adequate evidence that the tenant has breached a material term of the agreement with the tenant, I find no merit to the landlord's claim that the tenancy should be ended for a breach of a material team of the tenancy agreement.

Much of the remainder of the parties' oral, written and photographic evidence addressed events and conditions that have occurred after the landlord issued his March 25, 2011 Notice. The before and after photographs are of assistance in understanding the efforts the tenant has made to comply with the notices of violation issued by the municipal representatives and to outline the support that he is now receiving from a community service agency. However, actions taken by the tenant and the community service agency on April 9, 2011 do not speak to the condition of the rental unit at the time that the Notice was served. Similarly, the landlord's oral testimony regarding a pest control spraying that occurred the day before this hearing is of limited benefit to my consideration of the March 25, 2011 Notice. Although I have given due consideration to the evidence submitted after the Notice was issued, I find that this evidence is relevant for the most part to the extent that it provides context to the concerns identified in the landlord's Notice.

Based on a balance of probabilities, I accept the evidence submitted by the tenant's agent and the tenant that there are major bedbug problems in this building and that it is very difficult to determine the original source of this infestation. The tenant testified that this is an old building and there are "bedbug freeways" between the various rooms. The landlord has not provided sufficient evidence to demonstrate that the bedbug problems originated in the tenant's rental unit or are even most prominent there. No one other than the landlord's agent provided testimony at the hearing, although some undisputed corroborating written evidence from witnesses to the bedbug infestation was entered into evidence by the landlord.

At the hearing, the landlord's agent entered oral testimony that he has shown the before and after photographs of the tenant's rental unit to the owner of this property, the landlord. He said that neither he nor the owner of the property believe that the cleaning conducted by the tenant and the community service agency adequately resolves the landlord's concerns about the health or safety of lawful rights of the landlord and other occupants in the building. The landlord maintained that the condition of the rental unit after the cleaning continues to put the landlord's property at significant risk.

I appreciate that the tenant and the community service agency have taken measures to improve the condition of the tenant's housekeeping so as to reduce the concerns about a continuation of this tenancy. However, these measures are very recent and do not reflect the very poor condition of the premises when the landlord issued the Notice. I find that the landlord had adequate reasons to issue the Notice based on the condition of the rental unit on March 25, 2011. Even now, I find that the photographs of the rental unit do not adequately allay the landlord's legitimate concerns about the significant risk and health and safety concerns presented by the debris and material remaining in the

rental unit, a unit that is now afflicted with a considerable infestation of bedbugs. Although some progress has been made in reducing the clutter and debris in the tenant's rental unit, the photographs of the tenant's rental unit indicate a continuing problem that seriously jeopardizes the health, safety or physical well-being of the occupants of this building and the landlord and places the landlord's property at significant risk.

On a balance of probabilities, I find that the landlord has reasonable grounds to end this tenancy for cause on the basis that the tenant has put the landlord's property at significant risk and has seriously jeopardized the health, safety or lawful right of other occupants in the building and the landlord. I dismiss the tenant's application to cancel the Notice to End Tenancy with the effect that this tenancy ends on the effective date set out on that Notice. I issue no Orders with respect to the end to this tenancy as the landlord has not applied for an Order of Possession and the landlord made no oral request for an Order of Possession at the hearing.

Conclusion

I dismiss the tenant's application to cancel the Notice to End Tenancy without leave to reapply.

I order the landlord to conduct repairs to the trap under the tenant's sink once the pest control problems in this rental unit have been resolved.

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*.