



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF
 CNC OLC OPT FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for cause and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the Notice to end tenancy for cause, to obtain an Order to have the Landlord comply with the Act, to obtain an Order of Possession and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence provided by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has a 1 Month Notice to End Tenancy been issued and served in accordance with the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to end this tenancy in accordance with section 47 of the *Residential Tenancy Act*?
3. If not, has the Tenant met the burden of proof to obtain Orders to have the Landlord comply with the Act, regulation or tenancy agreement, an Order of Possession, and to have the Notice cancelled pursuant to sections 62, and 47 of the Act?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began on August 1, 1994 and switched to a month to month tenancy

after January 31, 1995. Rent is payable on the first of each month in the amount of \$1,034.00 and on July 16, 1994 the Tenant paid \$450.00 as the security deposit.

The Landlord affirmed that he has been the property manager at this building for six months and he has been dealing with a bed bug infestation in the building. He confirmed that a 1 Month Notice to End Tenancy was posted to the Tenant's door on August 29, 2011 which indicates the following reasons for issuing the Notice:

- 1) *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*
- 2) *Tenant has caused extraordinary damage to the unit/site or property/park*

The Landlord advised he was dealing with complaints of bedbugs and on May 9, 2011 he posted a notice of monthly inspection. He said that he was shocked when he went inside the Tenant's unit as there was a major infestation of bedbugs. There were six or seven other units infected but those units had a low infestation compared to the Tenant's unit. He contends that they are losing other tenants who are moving out because of the infestation. He provided in his evidence copies of the notice of inspections and copies of the pest control purchase orders and invoices.

The Landlord pointed out that the Tenant was issued a notice on May 10, 2011 which states "The condition of your apartment is unacceptable and needs to be remedied immediately". He confirmed that there was not a detailed list provided to the Tenant explaining what was required. The Landlord alleges that the Tenant's unit is so dirty that it poses a health hazard as he believes the carpet has not been cleaned in 17 years.

The Landlord stated that he has attempted to help the Tenant by calling the references listed on his initial application to get the Tenant help with cleaning his unit. Regardless the Landlord has spent lots of money on pest control and is losing tenants because of this Tenant's bedbugs. The Landlord wants an Order of Possession so they can clean and renovate this rental unit.

The Tenant affirmed that he first reported the bedbug issue to the previous property manager in October 2009 and when nothing was done he reported it to her a second time. When the Landlord failed to take action he researched how to remediate the bugs and cleaned his unit himself. About six months later he reported the bedbug problem to the Landlord again and still nothing was done. Afterwards a few tenants got together and report the problem to the municipality and complained that the Landlord was not

taking action. The municipality contacted the Landlord and issued them orders to deal with the problem.

The Tenant stated that after the first treatment did not solve the problem he had a conversation with the new property manager who told him that he could hire his own pest control company because the company hired by the Landlord was not very good. The Tenant took this advice and hired a well known pest control company and paid to have three treatments as supported by the invoices he provided in his evidence. He affirmed that there have been no bedbugs in his rental unit since the end of July 2011.

The Tenant stated that he has a cleaning lady who cleans his rental unit every three weeks so he is not sure why the Landlord is saying his rental unit is not clean. As for the carpet in his unit, the Tenant advised the carpet was bad when he moved in 17 years ago and now it is 17 years older.

The Tenant pointed out that the copy of the Landlord's purchase order dated May 12, 2011, ending in #142 and provided in evidence indicates that the tenants reported the problem to the previous building manager five months earlier and she took no action.

The Tenant advised that he had a conversation with the Landlord after he had received the Notice to end his tenancy when the Landlord advised he was endangering the health of other people. He responded by informing the Landlord he did nothing to foster or create the presence of bedbugs. It was during that conversation that the Landlord offered the Tenant to move into another suite so they could renovate his unit. The Tenant clarified that he would be allowed to move back into his suite after the renovations to which the Landlord agreed but nothing has been done about this proposed renovation. The Tenant stated that he feels he is being evicted in retaliation for being involved in reporting the Landlord to the municipality.

In closing the Landlord stated that he did not like the Tenant as a person and he does not like his bedbugs. He believes the Tenant is responsible for the bedbugs because his unit is the one that had the worst infestation and the Tenant's rental unit needs to be renovated. The Landlord does not have another unit for the Tenant to move into so he needs to move.

Analysis

The Landlord has issued a 1 Month Notice to end this tenancy pursuant to the following sections of the Act:

47(1)(d)(ii) the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and

47(1)(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property,

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice. The Landlord relied on two matters for issuing the Notice (1) the presence of bedbugs in the Tenant's unit; and (2) the condition of the carpet in the Tenant's rental unit.

The evidence supports that there was an infestation of bedbugs in the Tenant's rental unit, along with several other rental units. The Landlord alleges that the Tenant is responsible for the infestation however given the ability of bed bugs to jump from one article to another and to travel with unsuspecting hosts, I cannot determine with any certainty in which unit the infestation began.

Section 32 (2) of the Act provides that 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.

The evidence proves the Landlord ignored the bedbug complaints from tenants for several months, before taking action, which led to the tenants reporting the problem to the municipality, and orders being issued to the Landlord. Based on the aforementioned I find that it was not this Tenant who breached the Act by jeopardizing the health or safety or lawful right or interest of the landlord or another occupant; rather it was the Landlord who breached section 32 of the Act by failing to maintain the residential property in a state of repair that complies with health, safety and housing standards required by law. Accordingly I find the Notice must fail on this ground - 47 (1)(d)(ii)

The Landlord relied on his testimony as evidence to prove the Tenant has caused extraordinary damage to the rental unit carpet because the Landlord alleges the Tenant does not keep his rental unit clean enough. The evidence supports the carpet was

“bad” at the onset of this tenancy and the tenancy has continued for 17 years without the Landlord changing or maintaining the carpet. *Residential Tenancy Policy Guideline # 37* provides that the useful life of carpet is ten years. After careful consideration of the aforementioned I find that on a balance of probabilities, the Tenant has not breached the Act; rather the carpet currently located in the Tenant’s suite has simply surpassed its useful life. Accordingly, I find the Notice must fail on this ground - 47(1)(f).

Based on the aforementioned I find that the Landlord has not succeeded with the burden of proof for issuing the 1 Month Notice to End Tenancy issued on August 29, 2011. Accordingly, the Notice is hereby cancelled.

The Landlord has not been successful with his application; therefore he must bear the burden of the cost to file his application.

Tenant’s application

As per the aforementioned, the Notice has been cancelled; therefore the Tenant has been successful with his application to have the notice cancelled.

The Tenant has also applied to obtain Orders to have the Landlord comply with the Act, regulation or tenancy agreement and obtain an Order of Possession. There is insufficient evidence before me to warrant issuing an Order to have the Landlord comply with the Act, now that the bedbugs have been dealt with, and the Tenant has possession of the rental unit. Therefore I dismiss these requests.

The Tenant has primarily been successful with his application, therefore I award recovery of the **\$50.00** filing fee.

I have included with my decision a copy of “A Guide for Landlords and Tenants in British Columbia” and I encourage the parties to familiarize themselves with their rights and obligations as set forth under *Act*.

Conclusion

I HEREBY DISMISS the Landlord’s application.

The 1 Month Notice to End Tenancy for cause issued August 29, 2011 is HEREBY CANCELLED and is of no force or effect.

The Tenant may deduct the one time award of **\$50.00** from his next rent payment.

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: October 12, 2011.

Residential Tenancy Branch