



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The tenant acknowledged having received a 1 month notice to end tenancy for cause (the "Notice") on October 19. The Notice alleges 3 grounds for ending the tenancy. At the hearing the landlord stated that one of the grounds was indicated in error. The remaining 2 grounds are:

- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that on or about August 11, the tenant reported that he had bedbugs in the rental unit. The landlord stated that she contacted the Department of Public Health and was told that most landlords treat rental units without the assistance of professionals, so she purchased a residual spray and rented a commercial machine to fumigate the rental unit. The landlord testified that the tenant was asked to remove his belongings from the unit, which he transferred to the front lawn. The landlord sprayed each item with the residual spray as well as spraying inside the unit. The landlord then fumigated the unit to encourage the bugs to walk onto the residual spray so they would be exposed to the toxin. The parties agreed that there were no further issues with bedbugs until October.

The tenant testified that on October 17 he found another bedbug bite and on October 18 reported this to the landlord. On October 19 the tenant found the Notice.

The landlord testified that the tenant did not cooperate with her attempts to treat the unit in October which led her to serving the Notice.

The landlord further testified that the tenancy agreement provided that "All pets must have written permission" which she claimed meant that pets were prohibited absent written permission. The landlord testified that the tenant has a cat. She acknowledged that she had not given the tenant written notice advising him that he had breached a material term of the tenancy.

Analysis

The landlord bears the burden of proving that she has grounds to end the tenancy. In order to end a tenancy because the tenant has breached a material term of the agreement, the landlord must prove that the term is a material term and that the tenant has been given written notice of the breach and opportunity to correct it. As the landlord has acknowledged that she did not give the tenant written notice that he had breached a material term of the tenancy agreement, I find that this allegation cannot support a notice to end tenancy. I make no finding on the question of whether the term in question is indeed a material term.

The landlord provided a copy of an invoice showing that she rented the fumigation machine on October 19. Although the tenant testified that he did not receive the Notice until October 19, it is dated October 18, the same day he reported bedbugs to the landlord. I find it unlikely that the landlord attempted to treat the unit prior to having given the Notice. I find it more likely than not that the landlord issued the Notice as soon as she received the report that there were again bedbugs in the unit. The landlord has not proven that the tenant deliberately or negligently introduced the bedbugs to the building and in the absence of such proof, I find that the mere fact that there are bedbugs in the unit is not sufficient grounds to end a tenancy. I note as well that the Notice alleged that the tenant has disturbed other occupants. The landlord provided no evidence whatsoever that any other occupants of the residential property were disturbed.

I find that the landlord has not met the burden of proving that there are grounds to end this tenancy and accordingly I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

Conclusion

The notice is set aside.

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 14, 2011

Residential Tenancy Branch