



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to the tenant's application seeking to cancel a Notice to End Tenancy given for Cause. The tenant initially made applications for compensation for damage and/or loss and for emergency repairs and other repairs however, at the hearing of this matter the tenant withdrew those applications.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Does the landlord have caused to end this tenancy?

Background and Evidence

The landlord served a Notice to End Tenancy for cause on September 26, 2011. The tenant disputed that notice on October 3, 2011.

In the Notice the landlord states that:

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

- Seriously jeopardized the health and safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk;

and

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 says the tenant will not cooperate despite her numerous complaints. The landlord produced multiple communications from the tenant in which she complains about the infestations as well and letters she submitted from her treating physicians

stating that the tenant has health problems which are being exacerbated by the infestations. The landlord testified that they have attempted, on several occasions during the past 18 months over which time the infestation has taken hold, to take steps to eliminate the problem. The landlord states that the tenant has acted aggressively toward building staff and that she refuses to cooperate with the landlord and its agents in eliminating the infestations.

On February 14, 2011 a pest control inspection was performed and the technician noticed food on the tenant's balcony and that the tenant was leaving the balcony door open. The rental unit looks out over a garden area. The tenant was advised that she cannot leave food on the balcony and that she must seal food tightly in containers in order to facilitate elimination of the rodent infestation. The landlord produced 15 pest control inspection/treatment sheets dating back to November of 2010 which included treatments of the tenant's suite. The landlord submits that all the treatments will not help if the tenant will not cooperate.

On April 26, 2011 the building supervisor says the tenant approached her asking how the pest control problem was going to be handled. The building manager says she told the tenant to de-clutter her apartment in preparation for treatment but the tenant yelled at her saying "how dare you".

In May 2011 a City of Vancouver Inspector inspected the rental unit and provided advice to the tenant on how to eliminate the infestation.

The landlord submitted a work report that states that on June 15, 2011 a maintenance worker attended to cement the holes in the rental unit.

The landlord testified that while there are areas of the building where there are mice, there are currently no mice in any other suites. There was a mouse problem in the suite below and one suite over from the tenant's suite and this was eliminated quickly with treatment because the tenant cooperated.

In July 2011 the tenant wrote to complain about the mice problem. The landlord wrote back asking the tenant to remove all her items from the balcony to give staff more space to seal the holes. The landlord advised that they had a door sweeper and glue traps ready to be installed but they needed the tenant's cooperation to do so. The landlord warned that fruits had to be sealed in the warm summer months to keep flies away. The landlord reminded the tenant that BI an Inspector from the City of Vancouver had inspected the rental unit and provided advice to the tenant to help her eliminate the

infestation. Further, that the inspector came by on June 15, 2011 but was refused entry to the suite by the tenant.

The landlord also provided a letter from the supervisor of the tenant's homemaker who works with Greater Vancouver Community Services Society. The letter states that the tenant's homemaker was working in the tenant's suite on July 21, 2011 and she noticed that there were mice in the suite. The homemaker stated that the only way she believed the problem could be rectified was if the tenant would de-clutter her suite further that the homemaker reported seeing the cupboards full of food in bags and "...other stuff..." and the comment that "...the suite will not get rid of the problem if the tenant keep it in that condition" (*reproduced as written*).

On September 21, 2011 the Director of Housing Services for the landlord wrote to the tenant setting out the steps she must take prior to treatment of her unit and providing 24 hours notice of entry. A member from ARA Mental Health emailed the tenant stating that he had spoken to the Director. He advised the tenant that Director would not need to go into the tenant's suite if the tenant got "Robert" to move everything away from the walls to allow the maintenance people to go in "...and steam-clean the carpets and then plug up all the holes. They may ask that everything in your cupboards be put into plastic tubs or glass just not just plastic bags". Despite these instructions the tenant did not have the rental unit properly prepared and the cleaning and repairs could not be undertaken.

The landlord submitted a statement from JE dated October 1, 2011 advising that the tenant came into his office very upset and yelling. She asked for mice traps and then asked when the holes in her balcony would be sealed and the pest control will end the infestation of mice and flies in her unit.

The landlord submits that this is an ongoing problem because the tenant refuses to follow instructions. The holes were filled on one occasion but the filling did not stay put and the holes need to be repaired again. Further new holes are being created. Pest control professionals have attended to inspect the rental unit and provide advice and treatment but the tenant refuses to comply with the instructions to prepare the rental unit. The instructions include removing the food source, seal points of entry and clean and sanitize all areas of the unit that have signs of pest infestations. In order to complete these tasks pest control authorities have recommended that the unit requires a thorough cleaning of all areas which involves moving furniture and appliances away from the walls to vacuum thoroughly, have the carpet steam cleaned to remove mice urine trails which mice leave behind for other mice to follow; further to remove all food from shelves to clean and vacuum throughout using bleach wherever possible in the

cleaning process. The landlord submitted a report from Poulin's Pest Control dated September 6, 2011 setting out the steps to be taken with respect to this suite. The landlord testified that they have offered to have maintenance personnel move the items in preparation for the thorough cleaning but the tenant refuses to allow the landlord and/or his agents into the suite to do so.

This matter was originally set for October 31, 2011 and the matter was adjourned by the landlord in an attempt to resolve the matter with the tenant. The hearing was rescheduled for November 16, 2011 but the tenant did not attend. The tenant's application was dismissed and the landlord was awarded an Order of Possession. The tenant applied for review of that Decision stating that she believed her lawyer was in discussions with the Society and the matter was being resolved and the hearing had been cancelled. The review was allowed and a new hearing was set for this date. The landlord objected to the review being allowed because he says the tenant had fired her lawyer and she knew full well that the matter was not being discussed by the parties any longer and that the hearing set for November 16, 2011 had not been cancelled. The landlord submits that the tenant is simply setting up roadblocks and in the meantime the rodent infestation in the tenant's suite is seriously jeopardizing the health and safety or lawful right of other occupants and is putting the landlord's property at significant risk of an infestation in the entire building. Further, the landlord says that the tenant is becoming increasingly abusive with maintenance staff and she is frightening them by yelling at them to ask when they are going to get rid of the mice in her suite. The landlord submits that his staff should not have to deal with this type of aggressive behaviour. They are trying to help the tenant but the tenant will not cooperate and her cooperation is necessary to resolve this problem.

The landlord submitted that the tenant has been offered new accommodation in a building across the street where they believe she will receive the additional support that she requires however the tenant has refused to accept the offer.

The tenant says that the landlord has refused to take steps to eliminate the rodent problem in the building despite her numerous complaints. The tenant says there is a rodent infestation in other areas of the building including her storage unit in the basement. The tenant says she has never received instructions from the landlord as to how to prepare her suite for treatment. The tenant says it would be no problem to move her belongings because she only has one piece of furniture. The tenant says her suite is clean and that she has a cleaner who comes in to do the cleaning. The tenant says that the only reason the cleaner complained about the clutter in the tenant's suite is because the landlord prompted her to do so. The tenant says she is upset that the

landlord is not doing anything to eliminate the rodent infestation but says that she is not yelling at staff or treating anyone aggressively.

The tenant says she does not wish to move because this has been her home for many years. The tenant says she is 69 years old and she has had open heart surgery and she cannot move. The tenant says she will not “de-clutter” her suite because it is not cluttered. The landlord says she has books and she says she cannot be forced to get rid of her books.

The tenant says she has many witnesses who can attest to what she is saying however none appeared at the hearing. The tenant says some of them are the landlord’s maintenance people and they will not testify against their employer.

Analysis

The landlord has submitted substantial documentation and testimony with respect to this matter and I find that the tenant has submitted insufficient evidence to support her version of events. Overall I find, based on a preponderance of the evidence weighed on a balance of probabilities that the tenant is failing to take the necessary steps as instructed that would assist the landlord in taking their steps to eliminate the rodent problem in the tenant’s suite. While I am mindful of the tenant’s age and her health issues, in failing to cooperate with the landlord who is offering assistance to enable her to follow the necessary instructions, the tenant has chosen to facilitate the rodent infestation in her suite. In so doing she is seriously jeopardizing the health and safety or lawful right of other occupants and the landlord and she is putting the landlord’s property at significant risk of a complete rodent infestation.

Conclusion

The tenant’s application seeking to cancel the Notice to End Tenancy given for Cause is dismissed. The landlord has requested an Order of Possession and one shall be issued effective 2 days following service of the Order on the tenant.

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: December 22, 2011.

Residential Tenancy Branch