



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC; RP; FF; O

Introduction

This Hearing was scheduled to hear the Tenant's application for an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order that the Landlord make repairs to the unit, site or property; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter

At the outset of the Hearing, it was determined that the Tenant received a One Month Notice to End Tenancy for Cause (the "Notice") on October 25, 2011. The Tenant confirmed that he had filed late evidence on October 26, 2011, seeking to amend his application and to cancel the Notice. The Landlord stated that she had no objection to considering the Tenant's application to cancel the Notice at the Hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that unrelated disputes contained in a single application may be dismissed, with or without leave to reapply. As a result of the parties' agreement to amend the application before me to include a request to cancel the Notice, I advised the Tenant that his Application for Dispute Resolution filed on October 18, 2011, contained claims that were not sufficiently related to his application to cancel the Notice. The Tenant stated that he wished to deal with his application to cancel the Notice to End tenancy and that therefore, pursuant to Rule 2.3, I dismissed the Tenant's application for an Order that the Landlord comply with the Act, regulation or tenancy agreement and an Order that the Landlord make repairs to the unit, site or property **with leave to reapply**.

Background and Evidence

The Landlord testified that her agent served the Tenant with the Notice by handing it

to the Tenant at the rental unit on October 25, 2011 in the afternoon. The Tenant testified that the Notice was taped to his door on October 25, 2011, but agreed that he had received it on October 25, 2011.

The Landlord gave the following affirmed testimony:

The Landlord testified that in November, 2010, the Tenant found bed bugs in his home. On November 16, 2010, a professional pest control technician ("Don") inspected the rental unit and confirmed evidence of bed bug activity. Don gave the Tenant written instructions outlining various steps the Tenant would have to take to prepare his home for treatment. A copy of the instructions was provided in evidence.

The Landlord stated that the Tenant complied with the instructions, with the exception of removal of his bed frame, and on November 22, 2010, the rental unit was treated.

The Landlord testified that on January 25, 2011, a follow-up treatment took place. Evidence of live bed bug activity was found on the bed frame and the floorboards.

The Landlord testified that on May 14, 2011, at another follow-up inspection, evidence of bed bugs was found on the bed frame, an arm chair, coffee table, kitchen chairs and on the floor edge in the bedroom. The rental unit was treated again for bed bugs on May 24, June 17, and August 16, 2011. It was discovered that the Tenant was using household bug spray in an attempt to treat the bed bugs himself. The Tenant was told not to use household bug spray because it could interfere with the treatments that the professionals were using and could cause the bugs to spread to other suites.

The Landlord testified that in June and September 2011, bed bugs were discovered in two adjoining suites, a suite below the Tenant's suite and in the suite above the Tenant's suite. In order to attempt to mitigate, the Landlord asked the pest control company to prepare an assessment of the Tenant's suite and the other two suites. A copy of the assessment was provided in evidence.

The Landlord stated that one of the other affected tenants had to replace her couch and that she is an elderly person living on a pension.

On September 19, 2011, the Landlords received the assessment, which indicated that the professional's opinion was that the Tenant's suite was poorly kept and that Tenant was not fully cooperating with the instructions provided in order to prepare for treatments. The Landlord testified that the report stated that it appeared that the Tenant was using aerosols such as Raid in an attempt to treat the bugs himself, contrary to instructions.

The Landlord testified that the report stated that the suite directly above the Tenant's home had been treated in June and indicated no sign of bed bug activity in the furniture

or in the bedroom, although the occupant had advised that sightings and captures had occurred approximately once a month in the hallway or kitchen.

The Landlord testified that the suite directly below the Tenant's was cleaner than the Tenant's, but cluttered. The Report indicated that the occupant was elderly and not able to do much preparation work. The pest control company recommended a complete treatment of the suite directly below the Tenant's after proper preparations had been made.

The Landlord gave the Tenant a letter on October 1, 2011, requesting that the Tenant properly prepare his suite in order to eradicate the source of the bed bugs and warning the Tenant that failure to comply with the instructions would result in an eviction notice. The Landlord gave the Tenant two weeks to prepare his suite. A copy of the letter was provided in evidence.

The Landlord stated that she went to inspect the Tenant's suite to ensure compliance and found that the Tenant had tidied the suite, but had not contained the books and newspapers as instructed. There was evidence of live bed bug activity in the suite.

The Landlord submitted that in October, 2011, another suite was infected by bed bugs.

The Landlord submitted that the Tenant is hindering the eradication of the bed bugs by failing to properly prepare and maintain his home between treatments. The Landlord stated that the cost to the Landlord, so far, for the treatments to the Tenant's suite alone has reached \$1,588.94. Copies of invoices from the professional pest control company were provided in evidence. The Landlord submitted that there is a health risk to others every time a chemical treatment takes place, particularly to the elderly, and that the affected tenants have to stay away from their homes for 8 hours after treatment.

The Tenant gave the following affirmed testimony:

The Tenant testified that he didn't remove his bed frame because it was an antique and that he asked Don if he could paint it with varathane rather than get rid of it. He stated that Don told him it would be alright as long as he painted it very thoroughly with three coats to seal in any eggs, so the Tenant put three coats of varathane on the bed frame.

The Tenant testified that Don told him he had a "green light" in February, 2011, so he bought new furniture. The bed bugs came back and therefore the Tenant does not believe the pest control people's methods are effective. The Tenant submitted that the bed bugs were entering people's suites through cracks in the walls, ceilings and light fixtures and that they would continue to do so until all of the cracks were filled with polyfilla or sealed in some other fashion. The Tenant submitted that bed bugs can hide and live up to a year and therefore they would continue to come back as long as the cracks went unfilled. The Tenant provided photographs of his home in evidence.

The Tenant submitted that the treatments were not working because the cracks were not being filled, not because he had not packaged up his newspapers and books. He stated that it would cost him \$200.00 for plastic bins and that he didn't think he should have to pay out of his own pocket. The Tenant stated that he complied fully with the treatment instructions for three months, but it didn't work.

The Tenant stated that Don had told him that bed bugs sense that treatment is taking place and move to other suites.

The Tenant submitted that his suite was not dirty and in any event that bed bugs were not attracted to dirt, only people. The Tenant provided copies of internet searches on bed bugs and pheromones in evidence.

The Tenant stated that he only used household bug spray once, but that he had used other sprays that were given to him by Don.

The Tenant submitted that the Landlord's letter of October 1, 2011, did not attach a copy of Don's assessment so the Tenant did not know what to do.

The Landlord gave the following reply:

The Landlord testified that on October 14, 2011, she provided the Tenant with another letter outlining clear instructions on how to prepare for the next treatment and that she would be inspecting his home on October 25, 2011, to ensure compliance. In the letter, she stated that if the instructions were not followed, she would be serving the Tenant with an eviction notice effective November 30, 2011.

The Landlord asked for an Order of Possession effective November 30, 2011.

Analysis

The Notice provides the following reasons to end the tenancy:

- The Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
- The Tenant has put the Landlord's property at significant risk;
- The Tenant has not done required repairs of damage to the unit/site.

Based on the relevant documentary evidence and testimony, and on a balance of probabilities, I find that the Notice to End Tenancy is valid and should not be cancelled. The Landlord has a responsibility to all of the tenants in the rental property, under Section 32 of the Act, to provide and maintain it in a state that complies with the health, safety and housing standards required by law. The Landlord hired a professional to eradicate the bed bugs in the rental unit and, subsequently, in the rental property. The

professionals have identified the treatment options best suited to eradicating the bed bugs. The Tenant has a different opinion, but he is not a professional pest control technician. I find that the Tenant's interference with the Landlord's attempts to repair and maintain the property has put the Landlord's property at significant risk.

The Tenant agreed that he did not strictly comply with the professional's instructions or the Landlord's warning letter. The Landlord provided documentary evidence that the treatments to the Tenant's home alone have already cost \$1,588.94. This does not include the cost of treating the other rental units in the building. The bed bugs are still in the rental property and undoubtedly the cost to the Landlord will continue to increase until the bed bugs are eradicated.

I dismiss the Tenant's application to cancel the Notice to End Tenancy. The Tenant has not been successful in his application and is not entitled to recover the cost of the filing fee from the Landlord.

Section 55(1) of the Act states:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the testimony of the parties, I am satisfied that the Tenant received the Notice on October 25, 2011. I find that the effective date of the end of the tenancy is November 30, 2011 and provide the Landlord with an Order of Possession for **1:00 p.m., November 30, 2011.**

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued October 25, 2011, is dismissed.

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., November 30, 2011.** This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 04, 2011.

Residential Tenancy Branch