



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC CNC

Introduction

This hearing convened on November 16, 2011, and reconvened for the present session on December 8, 2011. This decision should be read in conjunction with my interim decision of November 17, 2011.

Issue(s) to be Decided

1. Has the Landlord complied with the Orders issued in the November 17, 2011 decision?
2. Has the Landlord breached the *Residential Tenancy Act* by refusing to have the rental unit treated by a pest control company?
3. Has the Landlord issued Notices to End Tenancy which meets the service and content requirements of the *Residential Tenancy Act*?
4. Has the Landlord proven cause for ending this tenancy?

Background and Evidence

At the outset of the hearing the Landlord continued to interrupt the process asking to discuss his request for correction that was submitted December 5, 2011, three days before the reconvened hearing. I explained to the Landlord that this hearing was not scheduled to discuss his request for correction and that a written response had been sent to him via mail.

The Landlord advised that he did not serve the Tenant with his evidence that was submitted to the *Residential Tenancy Branch* on December 5, 2011. He argued that the Tenant would have been served copies of his April 27, 2011 letter in April, and copies of each 1 Month Notice to End Tenancy (the Notice) prior to the end of the Month of October 2011 and November 2011.

The Landlord affirmed he has not complied with my Orders issued November 17, 2011. He has not had all 16 units in the building inspected for the presence of bedbugs, he has not arranged to have the Tenant's rental unit treated by a professional pest control

company, nor has he scheduled any treatments for any of the other potentially infected units.

The Tenant and his Advocate affirmed that earlier this year they had attempted to find another rental unit for the Tenant but were unsuccessful in finding something suitable for the Tenant. They confirmed that it is the Tenant's intention to remain in the rental unit. The Tenant's rent is currently paid by the Ministry of Social Development income assistance.

A discussion took place whereby it was indicated that the Tenant would not be capable of arranging pest control treatments or preparing his unit for the treatments without outside assistance. The Advocate confirmed that if they were given advance notice of the treatment date they could arrange to provide assistance for the Tenant in preparing his unit.

I asked the Landlord if it was his intention to follow my orders and arrange for treatment. The Landlord responded stating the pest control company in this town is very busy so it would take time to have the treatment done.

Moving on to the two Notices to end Tenancy issued for cause the Landlord confirmed his agent personally served the Tenant with each Notice, one at the end of October 2011 with an effective date of November 30, 2011 and a second one was served at the end of November, after the November 16, 2011 hearing, with an effective date of December 31, 2011. The reasons for issuing each Notice are as follows:

Notice effective November 30, 2011:

- Tenant has engaged in illegal activity that has or is likely to damage the landlord's property - hand written beside this is "*Fails to comply reasonable hygiene [sic]*"
- Tenant has not done required repairs of damage to the unit/site – hand written beside this is "*Fail to assist pest removal*"

Notice effective December 31, 2011:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has engaged in illegal activity that has or is like to

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord

The Advocate confirmed the Tenant was served with each Notice prior to the end of October and November 2011. He confirmed the effective dates, the Landlord's signature and the absence of a date each Notice was signed.

The Landlord stated each Notice was issued because the Tenant has been smoking marihuana in his rental unit and has numerous guests. He advised the Tenant was served a letter on April 27, 2011 advising the Tenant to change his behaviour. The Landlord confirmed there have been no other written warnings or letters issued to the Tenant and all previous communications have been verbal.

I asked the Landlord what happened to cause him to issue the first Notice at the end of October 2011. The Landlord stated again the Tenant is smoking marihuana in his apartment and causing damage to the drywall as the smoke smell cannot just be painted over and it is staining the walls. He alleges the Tenant is turning up his music, playing it too loud; jeopardizing other tenant's health by smoking his marihuana, brings in guests to his apartment that have previously been expelled from the building. The Landlord confirmed this is not a "non-smoking" building and there are no signs in the building indicating non-smoking areas. The Landlord stated that "this is enough for me to get him out."

The Landlord confirmed he lives in a different city, several hundred miles away, and that he can see what goes on in the apartment building through "short circuit TV." He advised that he has been to this building at least six times during this past year and as recently as August or September 5, 2011. He confirmed that he has an agent who resides in the same city as the rental unit who will serve documents or do some work for the Landlord as required.

The Advocate advised that he is of the opinion that this Tenant is being singled out in response to his application for dispute resolution which was filed October 19, 2011, just prior to the first Notice to end tenancy being served to him. He advised that he has worked with numerous tenants in this building and this Tenant is one of the better tenants residing in this building.

I asked the Tenant if he or any of his guests have: engaged in illegal activity that has or is likely to damage the landlord's property; he has caused damage requiring repairs to the unit; significantly interfered with or unreasonably disturbed another occupant or the

landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; damaged the landlord's property; or adversely affected the quiet enjoyment, security, safety or physical well being of another occupant or the landlord. The Tenant answered "No" to each issue or reason asked. He stated that another tenant has caused fumes in the hallway when they fell asleep when cooking and the fire department had to be called. He has only ever seen the Landlord at this building three or four times during his entire tenancy.

In closing the Landlord stated that he is not singling out this Tenant. He said he does not think it is fair for him to have to keep this Tenant and he does not want a bill for treatment of bed bugs to be accumulated from this Tenant. The Landlord advised that the further I reject him on the Notices to end tenancy the further problems are on him. He doubts the Tenant and Health Authority will co-operate will preparing the unit for treatment.

Analysis

The Landlord confirmed he did not provide the Tenant or his Advocate with copies of his evidence which is in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

The Landlord has affirmed that he has not complied with my Orders of November 17, 2011 and has not arranged to have the rental building inspected by a pest control company and has not initiated treatment of the Tenant's rental unit.

I do not accept the Landlord's testimony today that he will be following my orders; in part because the remainder of the Landlord's testimony pertains to evicting this Tenant to avoid an accumulation of pest control expenses, which completely contradicts his statement of future compliance. Furthermore, the evidence on file relating to the Landlord's recent request for correction disputing my orders clearly states "The order is over exercised and protested by the landlord".

In the absence of evidence to support the Landlord has taken any action to comply with my November 17, 2011 Orders, I find the need for pest control treatment of the Tenant's rental unit meets the requirements of section 33 (1) of the Act for **emergency repairs**. Accordingly I Order as follows:

- ❖ I HEREBY ORDER beginning with rent that is due January 1, 2012, the Tenant is to redirect 100% of his rent payment of \$400.00 per month towards payment of emergency repairs pursuant to section 33(7) which provides that a tenant may deduct the amount for emergency repairs from rent; and
- ❖ The Tenant's Advocate is Ordered to assist in organizing assistance to have the Tenant's rental unit prepared for treatment and hiring a professional pest control company to provide initial and any required subsequent treatments.
- ❖ The Tenant is ORDERED to continue to redirect his rent payments until treatment has been completed and the pest control company provides written documentation that the unit and surrounding units (either side, above and below) are clear of bedbugs.

I find the Landlord's failure to comply with my November 17, 2011 Orders to be an egregious breach of the Act, and I further Order, pursuant to section 62(3) of Act that the Landlord comply with Section 32 (1) of the Act to repair and maintain the rest of the 16 unit rental building as previously ordered (as listed below):

Pursuant to section 62 of the Act, I hereby Order the Landlord to hire a licensed professional pest control company to inspect all sixteen units in this building; obtain a written report as to which units display the presence of bed bugs; to have all infected units undergo initial treatment conducted by a licensed pest control technician; and to schedule and undergo any required follow up treatments.

- ❖ The Tenant's rent is to continue to be redirected until the Landlord has complied with this Order and has filed an application for dispute resolution, paying the filing fee, prove repairs have been completed as ordered, and obtain an Order to end the redirection of the Tenant's rent payments.

Section 64(3)(c) of the Act provides that subject to the rules of procedure established under section 9(3), the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

As per the aforementioned, I hereby amend the Tenant's application to include a request to Cancel not only the 1 Month Notice to End Tenancy that was received at the end of October 2011, and added to the application during the November 16, 2011

hearing, but also to include a request to Cancel the 1 Month Notice to End Tenancy that was received at the end of November 2011.

After careful consideration of the testimony relating to the content of each Notice to End Tenancy I find that neither Notice meets the form and content requirements as set out in section 52(a) of the Act, which stipulates that in order for a notice to end tenancy to be effective the notice must be signed and dated by the landlord. Accordingly I find both Notices to be invalid, as neither Notice was dated by the Landlord.

Furthermore, I find that the issuance of each Notice is a retaliatory response to the Tenant seeking remedy through dispute resolution. I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

Conclusion

The 1 Month Notice to End Tenancy with an effective date of November 30, 2011 is void and is of no force or effect.

The 1 Month Notice to End Tenancy with an effective date of December 31, 2011 is void and is of no force or effect.

The parties to this dispute are HEREBY ORDERED to comply with my above listed Orders, pursuant to section 62 of the *Act*.

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 09, 2011.

Residential Tenancy Branch