



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, OLC, RP, FF

Introduction

The hearing was held in response to the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause issued on February 27, 2012; compensation for damage or loss; an Order the landlord comply with the Act; that the landlord make repairs to the rental unit and filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenants indicated several matters of dispute on their application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply. The parties were informed that any Orders I deemed necessary, would be made.

I note that the tenant's monetary claim contained items that refer to pest treatment costs. This category of claim was referenced in a decision issued on January 19, 2012 (file 785563.) A copy of this decision was supplied by the landlord.

The tenant confirmed receipt of the landlord's evidence package and confirmed she had adequate opportunity to review the submission.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on February 27, 2012, be cancelled?

Background and Evidence

The tenancy commenced on February 1, 2010; rent is \$885.00 per month.

The landlord and the tenants agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants are required to vacate the rental unit on March 31, 2012.

The reasons stated for the Notice to End Tenancy were that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- put the landlord's property at significant risk; and
- that the tenants have not done required repairs of damage to the unit.

The parties confirmed that a previous 1 Month Notice to End Tenancy for Cause had been issued and that a hearing was held on January 17, 2012; a decision was issued on January 19, 2012 (file 785563.) That Notice ending tenancy was cancelled and the parties were given specific instructions and direction in relation to future bed bug treatment and preparation. The January 19, 2012, decision found that the absence of a written copy of the bed bug treatment instructions given to the tenants resulted in an inability to determine if the preparation instructions were vague, as suggested by the tenants. The tenants had also submitted that verbal instructions given by the pest control company were also too vague.

The January 19, 2012, decision determined that the landlord could not be found solely responsible for any bed bug problem that might remain in the unit; the landlord had paid for 2 heat treatments in the past 3 months. The decision provided a set of instructions, as part of an order issued. The landlord has responded to each of the 6 steps; indicating the action they took, in compliance with the dispute resolution officer's orders. The Orders made to both parties were:

1. *This landlord must obtain a professional opinion as to whether the tenants' unit still has or likely has bed bugs.*
2. *If, in a professional opinion, the unit still has, or likely has, bedbugs the landlord must treat the unit for bed bugs again.*
3. *If, in a professional opinion, the tenants' unit still has, or likely has, bedbugs the landlord must obtain a professional opinion as to whether surrounding areas or adjacent units must be treated for bed bugs and treat those areas in accordance with the professional's recommended treatment.*
4. *Prior to another bed bug treatment in the unit, if any, the landlord must give the tenants written instructions for preparation of the unit and/or their possessions and provide the date of the scheduled treatment to the tenants in writing.*
5. *The notice given under part 4 must give the tenants a reasonable amount of time prior to the scheduled treatment date.*
6. *The tenants must comply with the preparation instructions provided to them by the landlord. If the instructions are not sufficiently clear to the tenants, the tenants must seek any clarification from the landlord in writing.*

The parties confirmed the following events occurred, as outlined in the January 19, 2012, decision:

- September 11, 2011

- report of bed bugs made by tenants;
- September 14, 2011
 - pest heat treatment was to be provided by the landlord but the suite was not prepared for treatment;
- December 5, 2011
 - Unit inspected for treatment preparation; and
- December 12, 2011
 - Unit heat treated for bed bugs, even though unit still cluttered.

The tenants had acknowledged that the period of time between September and December, 2011, when no treatment was scheduled, was as a result of their need to de-clutter the unit throughout October and November. During that time extra storage space had been provided by the landlord.

After receiving the January 19, 2012, decision the landlord provided a copy to their professional pest control company. The pest control company then attended at the building to complete inspections of the rental units. The landlord provided a copy of a February 13, 2012, email sent by the pest control company, with an attached report which outlined findings from inspections of units completed on February 2, 2012.

The pest control report indicated that the tenant's unit had 2 prior bed bug heat treatments, that 4 bed bug nymphs were found around the bed and that the unit was heavily cluttered, although some efforts had been made to improve on the clutter. Fly contamination and condensation areas were found present around the windows; resulting in mould growth and fly eggs. The general sanitation level was determined to be low. The report indicated that the tenants seemed to be aware of the issues.

No evidence of bed bugs were found in units adjoining the tenant's, nor were bed bugs found in the adjoining stair well. A copy of a February 9, 2012, invoice for pest control inspection services was supplied as evidence of the inspection in the tenant's building.

The tenants confirmed receipt of a February 16, 2012, notice of inspection and bed bug treatment notice; that was accompanied by a detailed 2 page, treatment preparation instruction sheet. A copy of the notice and preparation sheet was supplied as evidence.

The instructions provided specific bed bug treatment preparation steps the tenants must take, such as:

- moving furniture 12 inches from walls;
- all bookcases should be free of any small items;
- linens, folded clothes, blankets should be in open-weave laundry baskets;
- all linen removed from beds;
- hanging items should have ½ inch between each;
- loose papers should be in boxes; and
- wall-mounted items should be removed.

The instructions provided a definition of clutter, as "strew, crowd together in disorder, obstructive mass of objects" and warned that compliance with the instructions was critical to the success of the treatment. The tenants were instructed to remove or drastically reduce all clutter.

Several days prior to the scheduled February 24, 2012, upon request of the tenants, the pest control company branch manager attended at the unit. The tenants were given further specific instructions for treatment preparation and the tenant took notes of those instructions; a copy of which was supplied as evidence.

On February 24, 2012, one of the tenants remained at the unit to meet the pest control staff who were to carry out a heat treatment. Photographs taken of the unit on that date were supplied by the tenants and the landlord.

The landlord submitted a February 24, 2012, letter issued by the branch manager of the pest control company. This letter referenced the attempted heat treatment of the tenant's unit on that date. The branch manager confirmed he had met with the tenants in order to ensure they understood their responsibilities for treatment preparation.

The pest control company manager indicated that the tenants had made a better preparation effort than they had previously, but there was still insufficient effort made. Preparation deficiencies included:

- some books cases with large amounts of items;
- smaller, breakable items left on bookcases;
- an excessive amount of furniture for the size of the unit, which makes treatment difficult;
- more than an ideal amount of linen, stuffed animals and toys in the closets;
- stringed instruments that could be damaged; and
- 2 or 3 wicker baskets of clothes and linens piled 3 feet high and 4 to 5 feet in diameter in the entry.

The tenants had completed enough preparation to allow the pest control staff to further inspect the unit and they determined that the problem was much worse than previously thought. A heavy infestation of bed bugs was discovered and eggs were located in areas where they would not have been suspected. The pest control staff were unable to determine if the bugs had migrated into the walls or under the carpets; eggs were visible on the hinges of the closet doors, on the bed-frame and on the back of doors. The closets contained so many items that further inspection was difficult. The letter indicated that heat treatment generally allows for less preparation and this would only be the case where there was not an excessive amount of belongings in the unit, relative to the size of the unit.

The branch manager recommended that further preparation work needed to be completed and that further inspection was required so that the heat treatments could be focused.

The tenants responded that the landlord has not been diligent in the past when faced with bed bug reports. The tenants also disputed the date the inspection was completed; that the unit was inspected on February 9, 2012 and that they received the treatment notice and instructions on February 16, 2012.

The branch manager then came to the unit on February 21, 2012, to review the treatment preparation efforts that had been made. The tenants took notes and had the branch manager initial the hand-written notes, which indicated items that required further preparation attention, such as; clearing the floor of the closet, pull out drawer, loosen books and toys on shelves, increase airflow on shelves and to talk to landlord

about temporary storage. The tenants testified that they then carried out further de-cluttering and treatment preparation.

The evening before treatment was to occur the tenant's met with a pest control staff member and they went over the placement of furniture. On the next day, when the pest control staff arrived the tenant agrees they determined they could not treat, but that the refusal to treat was not based on poor preparation, but the discovery of a more serious infestation. The tenants submitted that the reasons given for not completing treatment were trivial; such as breakable items on shelves and the use of laundry baskets. The tenants stated they could have been informed on February 23, 2012, that the preparation was inadequate.

The tenants believe that the February 24, 2012, written report supplied to the landlord by the pest control company contains inaccuracies and does not reflect the conversation that the tenants had with the pest control staff. The tenants stated they asked if the shelves of the bookcases needed to be cleared and they were told they did not.

On February 28, 2012, the tenants called the branch manager of the pest control company and asked him if the treatment preparation had been sufficient. He responded that it had not been insufficient, that the deficiencies were minor and that treatment did not occur due to the discovery of a possible infestation in the walls and carpets.

Each party submitted photographs that were taken on February 24, 2012; the day of the attempted treatment. The landlord's photographs showed selves full of objects such as statues, books, boxes, stuffed animals, plastic shelving units, paperwork and toys; a computer desk holding paperwork, a hard drive, keyboard and purse; a mattress covered in a sheet; a closet with the upper shelf holding belongings, items hung in close proximity to each other; a light fixture and door hinges with insect eggs; a bed frame speckled with some sort of substance and a dark substance along a baseboard heater and along a wall.

The tenant's photographs showed items on bookshelves, such as books and paperwork, items in hanging clothes baskets, drawers piled across each other; furniture moved out from walls, another bookshelf with numerous small items, books and boxes, a closet with some items on the floor; items on the floor of the unit, such as a suitcase, toys; a mattress partially covered with a sheet; a black substance along a floor and a mattress that appeared to have a sheet covering it, that was placed on top of a baseboard heater.

The tenants stated that the landlord's photographs were dark and taken to show the unit in the worst light. The tenants stated their photographs provided a fair record of the preparation they completed as they were not dark and demonstrated their efforts to move items from the walls.

The tenants contacted the Corporation of Delta, to inspect the unit. The landlord supplied a copy of a March 1, 2012, letter issued by the Corporation's property use and compliance division which indicated there had been an inspection of the unit and mould had been identified around the windows and at the base of walls. The landlord was ordered, within fourteen days, to have a testing agency undertake air quality testing for hazardous mould and parasitic insects.

The landlord supplied a copy of a March 5, 2012, email sent to the Corporation of Delta, bylaw inspector, in which the landlord confirmed a previous conversation he had with the inspector. The landlord submitted that the issues were created by the tenant's chosen living environment; that the tenants had been asked to remove items from the unit so that treatment could occur and that 2 previous heat treatments had failed due to the tenant's failure to properly prepare the unit. The landlord stated they had been given an extension of time to comply with the Corporation of Delta's order; while they awaited the outcome of this hearing.

The landlord submitted that the tenant's have so many belongings in the rental unit that it has resulted in excess moisture problems and contributed to the growth of mould.

The landlord's written submission requested an order of possession.

Analysis

The tenants have applied to cancel a Notice ending tenancy for cause issued on February 27, 2012; the effective date of the Notice is March 31, 2010. In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have considered the reasons on the Notice which allege the tenants have disturbed others or the landlord and that the tenants have not completed required repairs to the unit and find there is no evidence that the tenants have disturbed others or that they were required to make repairs to the unit.

I have then considered the balance of the reasons indicated on the Notice ending tenancy, alleging the tenants have:

- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and
- put the landlord's property at significant risk.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

Serious jeopardy must reflect a situation, as defined by ***Black's Law Dictionary, 6th Edition***, that is, in part; "important, momentous or grave" combined with "danger; hazard; peril." In order to find that the tenant's have engaged in activity that has placed the landlord's property at significant risk, I must find that the damage is substantial, serious and posed harm, danger or loss.

In relation to the submission that the landlord has not been diligent in responding to bed bugs; it was previously found that the landlord was not solely responsible for any bed bugs that might be prevent and that the landlord had paid for 2 heat treatments in the previous 3 months.

From the evidence before me I find that the landlord has continued to respond to the reports of bed bugs and made all reasonable efforts to ensure inspections and

treatments were arranged; as set out in the Orders made on January 19, 2012. The dates that events occurred are in dispute, but even if the tenant's submission was correct in relation to dates; I find that the landlord took all necessary steps to address the reports of bed bugs and to provide the tenants with ample notice to prepare for treatment of the unit.

The pest control company hired by the landlord made efforts to provide the tenants with support and advice in relation to adherence to the treatment preparation sheet given to the tenants well in advance of the February 24, 2012, scheduled treatment. I find that the tenants cannot lay the blame for a lack of proper preparation at the feet of the pest control company or the landlord. The February 24, 2012, letter sent to the landlord by the pest control branch manager indicated that the tenants simply had not properly prepared for treatment. They had made improved efforts, but they were insufficient.

I find that as a result of the sheer volume of belongings in the unit, the efforts made by the tenants failed. There was no evidence before me that the tenants talked to the landlord after meeting with the branch manager on February 21, 2012, when it was suggested the tenants seek out storage for excess items in the rental unit, as indicated in the tenant's written notes. I have accepted the landlord's testimony that as a result of the somewhat improved preparation, the pest control company was able to make a more thorough inspection of the unit, only to discover a serious infestation.

The parties will not likely be able to establish how the bed bugs came to be present, but I find it is not difficult to accept that the failure of the tenants to place their unit in a state that allows for treatment puts the landlord's property at significant risk. The unit has now been declared to have a heavy infestation of bed bugs and treatment has been delayed as a result of a failure of the tenants to fully prepare the unit; which will result in further loss to the landlord for the cost of additional inspections and treatments.

The decision issued on January 19, 2012, recorded the tenants submission that there had been a delay between the attempted treatment scheduled for September 14, 2011, and the next treatment that was completed on December 12, 2011, as a result of the tenant's requiring extra time to prepare their unit for treatment. It is not unreasonable to consider that delay as having contributed to the situation that now exists in the unit.

I find that the written reports issued by the pest control company are reliable and I have rejected the tenant's submission that they were given information that is contrary to what was included in the written report supplied to the landlord. The tenants provided no evidence supporting their allegation that they were told their preparation was sufficient or that they were not responsible for the inability of the treatment to proceed on February 24, 2012.

In relation to the photographs submitted, I find that other than the level of exposure of the film, that the tenant's photographs capture much the same images as the landlord's. The shelves are covered in belongings and at least 1 closet was full of belongings. The instructions for treatment required that shelves be clear of small items that might need to be moved during treatment; this was not completed. Furniture had been moved and, as indicated in the February 24, 2012 report, efforts had been made to prepare, but those efforts were insufficient. Items were to be loosely placed in laundry baskets, not piled 3 feet high, 4 to 5 feet wide.

I have accepted the pest control report submission, that the decision to delay treatment was the direct result of the tenant's failure to fully prepare the unit and it was the tenant's improved effort to complete some preparation that revealed what was determined to be a serious infestation of bed bugs. The pest control company had no vested interest in not completing the treatment, but given the amount of belongings and furniture in the unit, relative to the size of the unit, they determined that preparation continued to be insufficient and that treatment was pointless.

The landlord and pest control company both submit that the unit is over-filled with belongings that make it difficult for the tenant's to comply; however, it is the tenant's responsibility to ensure that the unit is in a state that will allow the treatment to be effective. If that meant the tenants had to remove belongings from the unit; then the tenants had responsibility to do so. I find that the treatment notice was given in adequate time, that the instructions were clear, that the advice given prior to treatment required further de-cluttering and that the tenant's failed to adequately adhere to the instructions given.

Therefore, after considering whether the tenant's failure to fully prepare the unit for treatment placed the landlord's property at significant risk and seriously jeopardized the health, safety or lawful right of the landlord, I find that the landlord's lawful right to treat the unit, as required by section 32 of the Act has been thwarted by the inaction of the tenants. Therefore, I find that those reasons on the Notice are supported.

As the Notice is of force and effect and the tenant's application is dismissed, based on the request of the landlord, I find, pursuant to section 55(1) of the Act, that the landlord is entitled to an order of possession that is effective at 1 p.m. on March 31, 2012.

Conclusion

As I have determined that the landlord has submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I have dismissed the tenant's application to cancel the Notice.

The landlord has been granted an Order of possession that is effective **at 1 p.m. on March 31, 2012**. This Order may be served on the tenants, filed with 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: March 28, 2012.

Residential Tenancy Branch