



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause issued on August 23, 2013.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

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 reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the notice to end tenancy issued on August 23, 2013, be cancelled?

Background and Evidence

The tenancy began on December 1, 1996.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2013.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful rights 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's agent testified that they seek to end the tenancy due to two separate incidents. The first reason is for noise complaints that they received on August 9, 2013 and August 10, 2013. The landlord's agent stated the tenant received a written warning on August 12, 2013. The landlord stated there have been no further complaints regarding noise.

The landlord's agent testified that the tenant notified them that they had bed bugs in their unit in August 2013, and they immediately arranged for treatment. The landlord stated that the tenant failed to follow the proper procedures to ensure the unit was ready for treatment as it was cluttered. The landlord stated that the treatment proceed as scheduled and was just recently inspected and is not sure if the first treatment was successful. The landlord's agent stated the infestation was not found in any surrounding units. Filed in evidence are photographs of the tenant's rental unit.

The tenant testified that he complied with the instruction of preparing the unit. The tenant stated that the unit was treated on August 23, 2013 and since then the unit has been inspected and no further activity was found.

Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful rights 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.

In this case, the tenant had received a written warned by the landlord on August 12, 2013, regarding noise complaints that they received on August 9, and August 10, 2013. There have been no further complaints since receiving the notice. I find the tenant corrected the noise situation within a reasonable time after written notice was received.

Therefore, I find the landlord has failed to prove a breach of a material term of the tenancy or that the tenant unreasonable disturbed another occupant.

The evidence of the both parties was that tenant informed the landlord that their rental unit had bed bugs and that the landlord immediately arranged for treatment of the unit.

The evidence of the landlord's agent was that the tenant's action of not properly preparing the unit jeopardized the health, safety of other occupants and put their property at significant risk. The evidence of the tenant was that they complied with the instruction they received and treatment occurred on the scheduled date.

The landlord has filed photographs of the tenants unit which were taken at the time of the scheduled treatment and the photographs show that the rental unit is cluttered. The evidence of the tenant was that the unit is not normally this cluttered, but they had move items out of the dresser draws to accommodate the treatment.

In this case, the landlord has not submitted any supporting documentary evidence, such as a report from the pest control company that the tenant did not comply with the proper preparation of the unit or refused treatment and this action caused the rental unit go untreated, which seriously jeopardized the health and safety of other occupants. The landlord's agent has not submitted any supporting documentary evidence to support that having bed bugs put the landlord's property at significant risk.

The evidence was that the rental unit was treated on the scheduled date and an ongoing inspection has occurred to monitor the situation. Often second treatments may be required. I find the landlord has failed to prove that the tenant has seriously jeopardized the health or safety of another occupant or the landlord; I further find that the landlord has failed to prove that the tenant has put landlord's property at significant risk.

Sanitation is not a factor in whether you get bed bugs or not, as they are often introduced into a home by clinging to items such as used furniture or even books.

In light of the above, I find the notice to end tenancy was not issued for the reasons stated. Therefore, I grant the tenant's application to cancel the one month notice to end tenancy issued on August 23, 2013. The tenancy will continue until legally ended the Act.

The tenant has been successful with their application and is entitled to recover the cost of filing the application for the landlord. Therefore, I authorize the tenant a onetime rent reduction of \$50.00 from a future rent payable to satisfy this award.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is granted. The tenancy will continue until legally ended in accordance with the Act.

The tenant is entitled to a onetime rent reduction of \$50.00 to recover the cost of the filing fee from the landlord.

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: October 07, 2013

Residential Tenancy Branch

