



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pleqja Brothers Ent. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, CNC, O, OPC, FF

Introduction

This was the hearing of applications by the tenants and by the landlord. The tenants applied for a monetary award and then amended their application to dispute a Notice to End Tenancy. The landlord applied for an order for possession. The hearing was conducted by conference call. The named tenant and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Is the landlord entitled to an order for possession?

Are the tenant entitled to a monetary award and if so in what amount?

Are the tenants entitled to any other relief?

Background and Evidence

The rental unit is an apartment in Chilliwack. The tenancy began in October, 2011. The rent is \$850.00 per month. On November 15, 2013 the tenants applied for a monetary award for the cost of treating an insect infestation in the rental unit and for compensation for loss of quiet enjoyment and loss of belongings. On November 27, 2013 the landlord issued a one month Notice to End Tenancy for cause and the tenants then amended their application for dispute resolution to include an application to cancel the Notice. On December 31, 2013 the landlord applied for an order for possession.

The landlord's representative testified that the tenants damaged the rental unit and the suite below it by allowing the bath tub to overflow, damaging the apartment below the rental unit. In landlord's application for dispute resolution the landlord said that the

tenants had allowed the tub to overflow on five different occasions. The landlord did not submit any documentary or photographic evidence apart from a copy of the Notice to End Tenancy.

The tenant testified that there was a flood from an overflowing bathtub; it came from the bathroom used by his co-tenant. When the landlord advised him of the leak from the bathroom, he assisted in cleaning up the water. The tenant said that there was only one instance of an overflow from the bath tub, not five as claimed by the landlord's representative. The tenant said the he received the Notice to End Tenancy after he filed his application for dispute resolution and he said that it appeared to have been given in retaliation to his claim with respect to a cockroach problem.

The tenant testified that in September or October the landlord's representative asked whether he had a bug problem in his apartment because his neighbours had been evicted due to a cockroach and bedbug infestation. Later the tenant started to find cockroaches crawling around inside the apartment and in the hallways. The owner came to see the tenant at the rental unit. The tenant said that he told him about the problem and invited him into the rental unit to show him that there were cockroaches in the apartment. He said the owner promised to have the building "exterminated" (fumigated). The tenant said that since then nothing has been done. The tenant said that he has had to throw out furniture because of the infestation. The tenant requested compensation for his belongings, loss of quiet enjoyment and for the cost of bug sprays and borax to treat the infestation.

The tenant claimed payment of the sum of \$3,640.31 made up of the following:

- | | |
|--|------------|
| • Bug spray: | \$325.16 |
| • Borax: | \$40.15 |
| • Compensation for loss of quiet enjoyment | \$1,275.00 |
| • Belongings: | \$2,000.00 |

The tenant's claim for loss of quiet enjoyment was calculated based on one half month's rent for three months. The tenants submitted letters from other occupants who have moved out of the rental property due to the bug problem in the building. According to the tenants there are both bedbugs and cockroaches in the rental property and in the tenant's unit.

The tenant submitted receipts for insect sprays and treatments. He said that the tenant had to take steps to deal with the problem because the landlord did not follow up with a

professional treatment as promised. At the hearing the landlord's representative said that the tenant did not answer the door when the landlord came to the rental unit to provide pest treatment. She did not say when that was and did not produce any documents related to such a visit such as a written notice to the tenant or any information about the pest control company that was supposed to provide treatment. The tenant denied that there was any notification or attempt to provide pest treatment by the landlord.

Analysis

I accept the tenant's testimony that there was a flood on one occasion only from an overflowing bath tub due to inadvertence on the part of his co-tenant. The landlord's representative alleged that there were multiple floods, but supplied no supporting documentation. I did not find her testimony to be credible on this point. Similarly, I prefer the tenant's testimony that the landlord did not provide any fumigation or pest extermination services to the rental unit for several months, despite having promised to do so. I prefer the tenant's evidence to that of the landlord because, had the landlord made arrangements to provide pest control treatments there should have been evidence in the form of a written notice to the tenants advising them of the date and time of the proposed treatment in accordance with the provisions of the *Residential Tenancy Act*. If the landlord had any serious intention of providing proper pest control treatments, he would have given the tenants advance notice so they could prepare the rental unit in advance of the procedure.

Based on the evidence provided, I do not find that the flood on one occasion from an overflowing bath tub constitutes sufficient cause to end the tenancy and I therefore allow the tenants' application. I order that the Notice to End Tenancy dated November 27, 2013 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

With respect to the tenants' application, the evidence presented by the tenants establishes that there is a serious insect infestation in the rental unit and in the rental property as a whole and that the problem has been present for a number of months. The landlord has not provided any documentary evidence to establish that it has taken any steps to deal with the problem. I therefore order that the landlord forthwith hire a licenced pest control technician, have the technician inspect the rental property including the rental unit and provide a treatment plan to eradicate the insect infestation. I order that the landlord promptly have the directed treatments carried out by the pest control technician. If pest treatments are not provided, as ordered within a reasonable

time, the tenants have leave to reapply for a rent reduction until such time as the pest treatments have been carried out.

Because the landlord did not provide pest treatments in a timely way, I find the tenants were justified in their efforts to treat the problem themselves. I therefore award them the sum of \$365.31, as claimed for the cost of pest treatments and borax. I find that the tenants are entitled to an award for loss of quiet enjoyment due to the landlord's failure to address the problem. I fix the award at \$850.00. The tenant's claimed for belongings said to have been disposed of due to the bug infestation. The tenants did not supply any documents to support this claim and although the landlord may not have yet provided proper treatment for the insect problem, it has not been shown that he caused the problem or that he should be liable to the tenants for furniture said to have been discarded; this portion of the tenants' claim is dismissed without leave to reapply.

Conclusion

The one month Notice to End Tenancy has been cancelled and the landlord's application for an order for possession is dismissed. The landlord's application for a monetary award is dismissed with leave to reapply. If the landlord contends that the tenants have caused damage to the rental unit it may apply to claim for the cost of repairs, but the landlord must supply evidence to support such a claim. I have ordered that the landlord promptly have a pest control company treat the insect infestation in the rental property and I have awarded the tenant the sum of \$1,215.31. I grant the tenants an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court, or alternatively, the tenants may deduct the said sum from future installments of rent due to 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: January 14, 2014

Residential Tenancy Branch

