



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prince Charles Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause and for a monetary order to recover his RTB filing fee.

The landlord, the landlord's agent, and the tenant attended the teleconference hearing and all gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The parties agree that the tenancy started May 1, 2004.

The landlord gave evidence that the tenant was personally served with a Notice to End Tenancy for Cause (the "Notice") on December 27, 2013. The Notice specifies a move-out date of January 31, 2014 and lists the following reasons for the Notice:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
3. Tenant has caused extraordinary damage to the unit/site or property/park
4. 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 evidence is that all four reasons for the Notice stem from the same problem. The landlord asserts that there is a mouse problem in the tenant's suite, the mouse problem is affecting other tenants, and the tenant has failed to take steps to address the problem.

The landlord's evidence is that the building is an 18-unit wood frame building that was built in 1953. The landlord purchased the building in 1998 and states he has spent a significant amount of money maintaining and improving the building since then. The landlord's evidence is that there was not a mouse problem in the building in 1998.

The landlord gave evidence that the mouse problem started about seven years ago, in approximately 2007. It was not clear at that time what the source of the problem was. The landlord's evidence is that the tenant's unit was an issue at the time. The landlord had holes sealed around pipes in the tenant's kitchen wall in 2008. The landlord asserts that the tenant received notices to clean his suite in 2008 and 2009, however those notices were not put into evidence. The landlord's evidence is that the tenant complied at least partially in cleaning his suite when he received the 2008 and 2009 notices, however "he goes back to his old habits".

The tenant gave evidence that there was first a mouse problem in the building in November 2008. At that time, a large hole around a pipe in his kitchen was sealed off because it was determined that the hole was the way mice were getting into his suite. He said that there was a tenant downstairs at the time who had a massive mouse infestation and that was the source of mice entering other suites including his. He said sealing the hole solved the problem in his suite, and the downstairs neighbour was evicted.

The tenant gave evidence that he did not see or hear any mice activity in his suite again until March or April 2013. At that time, he heard the sound of a mouse in one of the cardboard boxes he has in his living room. He has some mouse traps that were provided to him in 2008, so he baited three traps and put them out. Shortly afterward, he caught a mouse in one of the traps and disposed of it. He did not advise the landlord about the mouse.

The tenant states that he does not keep food in the house and does not eat there. He states that the only dirty dishes he has would be used tea cups.

On December 12, 2013, the landlord issued a notice to the tenant titled "Breach letter – Material Term of Tenancy" (the "December 12 Breach letter"). The December 12 Breach letter reads:

"As the Landlord (or Agent of the Landlord) of the premises noted above, I wish to inform you that:

Your rental unit does not meet the cleanliness and sanitary standards required by you.

Please note the following that is indicated in the Residential Tenancy Act for British Columbia:

Landlord and tenant obligations to repair and maintain

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

As a result, you are breaching a material term of your tenancy agreement and also breaching the Residential Tenancy Act.

THESE ARE BREACHES OF MATERIAL TERMS of the Residential Tenancy Agreement we have with each other.

YOU MUST RECTIFY THIS WITHIN 5 DAYS, OR WE WILL TAKE ACTION AGAINST YOU.”

The tenant gave evidence that he received the December 12 Breach letter. He said that between December 12, 2013 and December 17, 2013 he cleaned his rental unit as follows: He picked up clothes from the floor and washed them, vacuumed his area rugs, mopped the tile floor and part of the hardwood floor, and moved some of his furniture so he could clean behind it. He said there were some quite dirty spots behind furniture that hadn't been moved for some time. He also wiped down walls, cleaned the kitchen and mopped the floor. The tenant's evidence is that he does not use the oven in the rental unit and has not used his toaster in seven years. Asked whether he kept food such as cereal or flour in the kitchen cupboards, the tenant initially said no, then noted he has a few items including some unopened pancake mix.

The landlord gave evidence that the property manager and pest control company inspected the rental unit on December 17, 2013.

On December 23, 2013, the landlord gave the tenant a letter (the “December 23 Breach letter”) which reads as follows:

RE: Your Suite / Filthy Unhygienic State / Material Breaches of Your Tenancy Agreement

We are the owners of the Prince Charles Apartments. I am writing further to the recent inspections of your suite by your building manager and our pest control contractor regarding the unclean, filthy state of your suite.

See attached Service Report from our pest control company summarizing his findings from the inspection of your suite on December 17, 2013. As you can see from his findings, you are continuing to maintain your suite in a filthy, dirty, unhygienic state that is contributing to the mice problem in your suite and other suites in the building. Under the Residential Tenancy Act (the “RTA”) this constitutes:

1. Extraordinary damage to your suite for which you can be EVICTED.
2. Unreasonable disturbance of another occupant of the property for which you can be EVICTED.
3. Breach of a Material Term of your tenancy agreement for which you can be EVICTED.
4. We are giving you 2 (Two) days to have your suite professionally cleaned and disinfected and any pests to be removed or exterminated from your suite and all refuse to be removed from your suite and provide us with proof via invoices for the professional cleaning and pest removal. We will inspect your suite in 3 (Three) days together with our pest control contractor. If you do not clean your suite, **YOU WILL RECEIVE AN EVICTION NOTICE** for the above violations of the RTA.

The December 23, 2013 Breach letter attached a copy of a report from Assured Environmental Solutions dated December 17, 2013 (the "Assured Report") regarding the rental unit which states under the heading "Pest Activity – Comments":

"Unit is dirty and requires further sanitation. The floors are clear now but in need of a sweep and mop. Mouse droppings around entire apartment perimeter including in the bed and the futon – at least weeks of mouse activity, probably many months, all of which have not been reported."

The Assured Report states under the heading "Advice and Precautions" – "Please do not touch baits or bait stations" and under the heading "Service Recommendations" – "Follow-up in 2 to 3 weeks."

The landlord's agent gave evidence that the pest control company told her that mice must be in an area for a long time before they start leaving droppings above the floor level. She said that the discovery of droppings in the tenant's bed indicated that mice had been active in the tenant's rental unit for a long time.

The tenant gave evidence that he did not see the December 23 Breach letter until December 24, 2013. He stated he did not think he was given a reasonable amount of time to clean the rental unit.

The landlord provided a copy of notes made by the building manager dated December 27, 2013 which reads "Visited suite to inspect for cleanliness of unit. Brought my partner Aurelio and contractor exterminator Jay with me. [Tenant] was home and opened the door for me. Exterminator took a look around and did not find any droppings or signs that mice have been in the apartment. I asked [Tenant] for receipts for the professional cleaning of his apartment and he informed me that he did not have

receipts. I reminded him that receipts were required by December 27th in order to remain a tenant in the building. Delivered the one month eviction notice to him personally.”

The landlord’s agent gave evidence that the pest control company inspected all 18 units in the building in December 2013 and also found mouse activity in three other suites, however there was not as much mouse activity as in the tenant’s suite. Two of those other suites are in close proximity to the tenant’s suite.

The landlord’s agent gave evidence that the pest control company did their monthly inspection of the common areas of the building in January 2014 and did not find any signs of mice. The tenant who lives beside the tenant in this application caught a mouse in early January 2014 but there were no other reports by any tenants of mice in January 2014.

Analysis

Where a landlord seeks to end a tenancy for cause, the onus is on the landlord to prove one or more of the stated causes on a balance of probabilities.

Significant interference and unreasonable disturbance

The landlord’s position is that if a tenant’s behaviour creates an ongoing mouse problem in the tenant’s suite, that behaviour significantly interferes with and/or unreasonably disturbs other tenants in the building because mice may then enter other rental units.

I agree with the landlord that such behaviour MAY constitute significant interference and/or unreasonable disturbance of other tenants. However, I find that a problem of this nature is not as clear-cut as a problem like that of a loud stereo. Where a tenant disturbs others by playing a loud stereo, it is clear what the tenant must do to stop disturbing others and that is to turn down the volume of the stereo. However, in the case of a pest infestation, I find that a tenant may not be aware that a problem exists and may not have adequate knowledge of how to address the problem. In that case, a tenant is entitled to be provided with adequate information about the existence of the problem and what specific steps he must take to address the problem.

The December 12 Breach letter makes no mention of a mouse problem and does not indicate how the tenant’s suite falls short of reasonable health, cleanliness and sanitary standards. I find the tenant was asked to rectify a problem, without being told specifically what the problem was or what steps were required to rectify the problem.

I find that the tenant took the cleaning steps he described, however he is likely mistaken in saying he took those steps before December 17, 2013 since the Assured Report dated December 17, 2013 indicates there were mouse droppings around the entire apartment perimeter. It is more likely that the tenant took at least some of the cleaning steps he described at a later date.

I find that the December 23 Breach letter identifies the problem clearly in the statement "... you are continuing to maintain your suite in a filthy, dirty, unhygienic state that is contributing to the mice problem in your suite and other suites in the building." However, I find that the December 23 Breach letter does not provide the tenant with the information necessary for the tenant to solve the problem, and some requirements do not appear to have a rational connection to the mouse problem.

The December 23 Breach letter requires the tenant to do the following within two days "... have your suite professionally cleaned and disinfected and any pests to be removed or exterminated from your suite and all refuse to be removed from your suite and provide us with proof via invoices for the professional cleaning and pest removal."

It is not clear which surfaces should be disinfected and it is not clear why the suite should be professionally cleaned. The Assured Report indicates the unit needs further cleaning, but provides no specific guidance about what areas should be cleaned or how those areas should be cleaned, other than to say that "the floors are in need of a sweep and a mop". The Assured Report does not indicate that disinfection is necessary. Further, it should not matter whether the cleaning is done by the tenant or a professional cleaning service, as long as the specific cleaning steps required to combat the mouse problem are done.

The requirement that "any pests to be removed or exterminated from your suite ... and provide us with proof via invoices for professional cleaning and pest control" appears to contradict the advice of the pest control company. The Assured Report states "Please do not touch baits or bait stations" and this suggests that tenants should not remove or exterminate pests themselves. That said, it is unlikely that the Assured Report intended that tenants should leave dead mice in the bait stations until the next visit of the pest control company.

Even if the steps to be taken were set out clearly in the December 23 Breach letter, and I find that they were not, I agree with the tenant that it is not reasonable to require him to have his rental unit professionally cleaned within two days, one of which is a statutory holiday.

I find the tenant took most of the cleaning steps he described after the December 17, 2013 inspection and prior to the December 27, 2013 follow-up inspection. This would be consistent with the pest company's findings that there were no mouse droppings or signs of mouse activity on December 27, 2013.

My understanding is that eradicating a mouse infestation may require fairly specific steps, such as placing all dry goods (cereal, flour) in metal, glass, or hard plastic containers. Other cleaning steps, such as washing windows, may have no impact on a mouse infestation. I agree with the landlord that a tenant is obligated to cooperate in a landlord's efforts to end and prevent further infestations. However I find that in this case the landlord did not provide adequate information to the tenant about what specific steps were needed from the tenant in order to combat the problem. I also find that at least one of the steps ordered by the landlord, professional cleaning, was not necessary in order to combat the problem. Further, I find that the landlord did not provide the tenant with a reasonable period of time in which to take the necessary steps.

For those reasons, I find that the landlord has not proven that the tenant significantly interfered with or unreasonably disturbed other tenants.

Extraordinary damage

The landlord did not present evidence that there was damage to the rental unit. I find that the landlord has proven there has been mouse activity in the rental unit, but there is no indication of damage that has resulted from the mouse activity.

For that reason, I find that the landlord has not proven that the tenant has caused extraordinary damage to the rental unit.

Failure to comply with a Material Term

The landlord takes the position that the tenant's obligation pursuant to Section 32(2) of the Act to maintain reasonable health, cleanliness and sanitary standards is a material term of the tenancy.

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. When the issue at hand is cleanliness, it is likely that a tenant's level of cleanliness only approaches materiality where it impacts other occupants or the landlord in a significant way. The tenant's level of cleanliness might be found to be material, for example, if it

caused significant interference, unreasonable disturbance, or extraordinary damage to the rental unit.

In this case, I have found that the landlord has not proven significant interference, unreasonable disturbance, or extraordinary damage. For that reason, I find that the tenant has not breached a material term of his tenancy. Even if there was a breach of a material term, I have also found that the tenant was not provided with a reasonable period of time in which to address the problem.

For those reasons, I find that the landlord has not proven that the tenant has breached a material term of his tenancy.

Conclusion

I order that the Notice to End to Tenancy for Cause is cancelled. The tenant may deduct the RTB filing fee of \$50.00 from his rent.

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: February 07, 2014

Residential Tenancy Branch

