



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RLB Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the conference call hearing, and both parties had a witness to call. The tenant's witness testified, but the landlord's witness did not; it was determined that the landlord's witness had no first-hand knowledge of the facts of the matter. The parties also provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on August 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$830.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$415.00 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant has a severe hoarding problem and has provided two packages containing photographs and testified that they were taken

on February 12, 2014 and on March 12, 2014. Both sets of photographs show the inside of the rental unit, with the exception of one photograph which the landlord's agent testified was taken through the window of the tenant's car. All photographs of the rental unit show belongings stacked high and crowding the kitchen, hallway, living room and bedroom leaving little or no room to walk about.

The landlord's agent further testified that bed-bugs are the biggest concern. A pest control company had been retained for other suites within the building, and advised the landlord's agent that it was necessary to find the primary source. The landlord's agent went out of the building and saw the tenant's car, also full of belongings, and testified that he observed bed-bugs on a blanket. The tenant was provided with a written 24 hour notice to inspect the rental unit, and the landlord's agent had not previously been inside that rental unit. He attended with an owner of the building and the building manager, and the parties were unable to fully open the door; it was restricted by garbage and personal property of the tenant. The kitchen was not useable due to items stacked on all counters and the floor. Bed-bugs were walking on picture frames and trying to attach themselves to the landlord's agent. The tenant agreed at that time that it was a problem. The landlord's agent warned the tenant that it needed to be cleaned up.

The landlord company sent the tenant a letter dated February 18, 2014 and a copy has been provided for this hearing. The letter states that the hoarding situation is a very serious health and fire issue, and that the infestation of bed-bugs in the rental unit has spread to neighbours on both sides and the pest control company can't treat the rental unit because of the hoarding. The letter states that since the situation is extremely serious, the landlord provides the tenant until February 27, 2014 to clean the rental unit or face an eviction notice being served on February 28, 2014. The letter also provides the tenant with a name and phone number of an agent of the landlord who would assist in having everything hauled away at the tenant's cost. Also provided is a copy of a report from the pest control company on the company's form dated February 24, 2014 which states: "At this time (the unit) is not prepared for bed bug treatment. Unable to enter residence as items are being stored from wall to wall and near ceilings in places. There is no base of walls/baseboards to deliver/apply product."

Further, the tenant has told other residents within the apartment complex about bed-bugs, which has caused numerous complaints to the building manager, and some tenants have threatened to move out. The landlord's agent fears more tenants will leave. The landlord needs the tenant's belongings moved out so that the rental unit and the building can be treated.

The landlord caused the tenant to be served with a 1 Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated February 28, 2014

and contains an expected date of vacancy of March 31, 2014. The reason for issuing the notice is: "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; and
- put the landlord's property at significant risk.

The landlord's agent testified that the notice was personally served on the tenant on February 28, 2014 and a Proof of Service document containing that information and a signature of the tenant has been provided.

The landlord's agent also testified that he returned to the rental unit on March 12, 2014 for a follow-up. The tenant stated that she never sees bed-bugs and they don't bite her, but the landlord's agent showed her some and pulled one out of her hair.

The tenant's son has been there assisting the tenant, and the landlord's agent observed the tenant pulling a bag out of the dumpster that the tenant's son put in there. The landlord's agent believes that some of the items in the rental unit came from the dumpster in the first place.

The tenant testified that the blanket in the car is covering a cabinet that the tenant is keeping for her daughter. It's new, clean and has never been in the rental unit.

The tenant also testified that when first moving into the rental unit, other tenants spoke about bed-bugs in the building, and one tenant got a sofa from the dumpster.

The tenant also testified that the bag that her son threw away contained a \$50.00 dress and it was thrown out by accident. That was the only bag that the tenant took out of the dumpster. The tenant and her son have taken out lots of stuff in plastic bags; furniture, books, magazines, etc. The tenant has spent \$200.00 on Raid and traps and has caught 3 mice in the rental unit.

The tenant requires another 3 to 4 weeks to finish cleaning out the rental unit. The tenant has some medical issues and has to keep appointments at the hospital and cannot do a lot by herself. The tenant also testified that the landlord's agents saw the tenant cleaning out the cupboards, and the tenant has washed dishes, etc. in boiling water.

The tenant's witness is the adult son of the tenant, and testified that he had not been inside the rental unit for a few years. The witness knows about the notice to end tenancy and has tried to help, but this is a busy season for the witness' work so he's only been able to attend there a couple of days per week.

The witness testified that his mother is elderly and can't do much on her own, and has to work at it slowly. The witness talked to the landlord's agent advising that they were going as fast as they could. The witness testified that after April 15, 2014 he can dedicate more time to assisting his mother.

The landlord's agent responded that the landlords appreciate what's been done but no more time can be agreed to because it's an emergency situation.

Analysis

The *Residential Tenancy Act* permits a landlord to issue a 1 Month Notice to End Tenancy for Cause in certain situations. I have reviewed the notice, and I find that it is in the approved form and contains an expected date of vacancy that is consistent with the *Act*. I have also reviewed the Proof of Service, and the tenant has not disputed that it was personally served on February 28, 2014 or that it contains her signature, and I find that the notice to end tenancy was served on that date and in that manner.

With respect to the reasons for issuing the notice, the tenant testified that there have been bed-bugs in the building since the beginning of the tenancy. I believe the tenant was attempting to demonstrate that her rental unit was not the primary source of the bed-bugs. Regardless of where the primary source is, it is clear from the photographs and report of the pest control company that the rental unit cannot be treated until all of the tenant's personal belongings are removed. The issue before me is whether or not the landlord has established the reasons for issuing the notice to end tenancy: that the 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; or put the landlord's property at significant risk.

The tenant and the tenant's witness require more time to bring the rental unit into a state that allows for treatment, however, the landlord's agent believes it to be an emergency situation and no more time can be agreed to.

The landlord issued a letter to the tenant dated February 14, 2014 which states that the tenant had to have the rental unit cleaned out or face eviction on February 28, 2014.

The letter also offers a name and phone number of an agent of the landlord that would assist to have items hauled away at the tenant's expense. I have heard no testimony of what that would have cost when the letter was written, nor do I have any evidence of whether or not the tenant could afford the cost. However, I find that the hoarding situation is an emergency situation which has prevented the treatment of bed-bugs within the rental complex, and has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and has put the landlord's property at significant risk.

The tenant's application is therefore dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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 24, 2014

Residential Tenancy Branch

