



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 956 MAIN STREET HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard. The tenant was assisted by his advocate. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began sometime in March 2013. On December 01, 2013, the building complex was sold and a new company took over the management of the building.

The landlord testified that during the month of December 2013, all the units in the building were inspected for compliance. On December 03, the tenant's rental unit was inspected and the unit was found to be in an unsatisfactory condition. The landlord stated that there was garbage strewn throughout the unit, there was evidence of bugs everywhere particularly around the sink and there was feces of cockroaches and bedbugs visible throughout the unit. The landlord took a video recording of the condition of the unit and filed a copy into evidence. The video recording includes an untidy unit and the presence of black spots around the sink.

On December 06, 2013, the landlord served the tenant with a letter requesting the tenant to remove all clutter and to maintain the suite and his personal belongings in a clean condition. The letter did not refer to the presence of bed bugs and cockroaches and their feces, as described by the landlord during the hearing. The letter referred to future inspections of safety issues regarding smoke detectors, plumbing and electrical systems and stated that at future inspections, the landlord expected "*to see some progress made regarding our request to clean your suite*".

On January 15, 2014, the landlord conducted a follow up inspection. The landlord testified that the unit was in the same condition as it was at the previous inspection and that the tenant had made no efforts to improve the condition of the unit.

On January 21, 2014, the landlord served the tenant with a second letter directing him to remove all clutter and clean up the suite. The letter also informed the tenant that there would be a follow up inspection on January 31, 2014, followed by a pest control treatment on February 01, 2014.

The second letter contained instructions regarding steps to be taken by the tenant to prepare his unit for the upcoming pest control treatment and also warned the tenant that if he chose not to participate, he would be served a notice to end tenancy. However attached to this second letter dated January 21, 2014, was a notice to end tenancy for cause dated January 24, 2014. The reasons for the notice were that the tenant has seriously jeopardized the health or safety of another occupant, put the landlord's property at significant risk and not done the required repairs of damage to the unit.

The landlord stated that he had received verbal complaints from other occupants of the building and upon inspection of their suites by the pest control company, it was determined that their suites and lifestyles were not the cause of the pest problem and that further investigation was required.

The second letter dated January 21, 2014, goes on to say "*Your suite has been identified as an originating cause for pest problems*". It is not clear whether this was determined by the pest control company or the landlord as the landlord did not provide any details of inspections if any of the rental unit, made by the pest control company.

The landlord also filed a letter from the pest control company dated January 28, 2014 that states that a thorough inspection was conducted to determine if there is a potential problem coming from suite 17 (the dispute rental unit). The letter does not specify whether the thorough inspection was conducted inside the rental unit or other parts of the building and the letter also does not indicate the date(s) of inspection(s). The letter describes the suite as requiring cleaning, disposal of the mattress and clothes to be washed in hot water.

The tenant testified that his suite is not full of garbage, feces or bugs. He stated that when he moved in, there was an old soiled mattress which he has since disposed off. The tenant filed photographs of his suite which he stated were taken sometime in February 2014. The photographs show that the suite is fairly clean and tidy.

The landlord stated that the tenant tidied up his suite just to take the photographs and also stated that he did not believe that the tenant would keep the suite in this condition for long. The landlord also agreed that he had not inspected the unit since January 15, 2014 and that the inspection and pest control treatment scheduled for January 31 and February 01 respectively were not carried out.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has seriously jeopardized the health or safety of another occupant, put the landlord's property at significant risk and not done the required repairs of damage to the unit.

Based on the testimony of both parties, I find that the landlord conducted inspections on December 03, 2013 and January 15, 2014 and served the tenant with two warning letters. The first letter requested the tenant to clean up the unit but made no reference to the presence of bed bugs and cockroaches or their faeces. The second letter contained instructions to prepare the suite for a pest control treatment and warned the tenant that if he chose not to participate he would be evicted. Attached to this letter was a post dated notice to end tenancy for cause.

The landlord agreed that he had not done an inspection after January 15, 2014. Based on the evidence filed by the landlord, I find that he served the notice to end tenancy without giving the tenant the opportunity to prepare his unit. In addition the landlord did not inspect the unit to determine whether the tenant had carried out the instructions to prepare the suite for the pest control treatment. And finally the landlord chose to serve a post dated notice to end tenancy for reasons that included his assumption that the tenant chose not to participate in the upcoming pest control treatment appointment, which actually never happened.

The tenant filed photographs of the condition of the rental unit that were taken sometime in February 2014. While I accept the landlord's testimony and evidence regarding the condition of the unit during the inspections on December 03 and January 15, I find that the tenant cooperated and made attempts to clear the unit of clutter. The landlord stated that he was not confident that the tenant would maintain the unit in this condition, but it is up to the landlord to conduct follow up inspections to justify his allegations that the tenant had cleared the unit just for a photo opportunity. I find that the landlord has not visited the unit after January 15, 2014, to determine whether or not the unit is kept in the condition as depicted in the photographs.

I accept that the tenant may have maintained the unit in a condition that did not meet the standards of the landlord and but I am not satisfied that this justifies bringing this tenancy to an end. I further find that the landlord served the notice to end tenancy prematurely and prior to conducting an inspection to determine whether the tenant had complied with his request.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated January 24, 2014. As a result, the tenancy shall continue in accordance with its original terms.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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 20, 2014

Residential Tenancy Branch

