



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy for cause. One tenant and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing, the tenant stated that they had not received the landlord's evidence package. The landlord stated that the evidence package was sent to the tenant by registered mail on May 1, 2014; therefore, as five days had not passed before the hearing, the landlord's evidence could not have been deemed served and I excluded the landlord's documentary evidence. Both parties were given full opportunity to give testimony. I have reviewed all testimony. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on September 13, 2005. The rental unit is an apartment in a multi-unit building.

On March 6, 2014 the landlord served the tenants with a notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were that the tenants (1) seriously jeopardized the health, safety or lawful right of other occupants; and (2) put the landlord's property at significant risk.

Landlord's Evidence

The landlord stated that the tenants' unit has been infested with cockroaches, and tenants have failed to report the problem to the landlord or cooperate with the pest treatments.

The landlord stated that the tenants' unit was inspected and then treated for cockroaches twice in October 2013. Prior to both treatments, the tenants were given written instructions on how to prepare their unit for treatment.

On February 6, 2014 the tenants living above the rental unit complained that they now had cockroaches in their unit. On February 12, 2014 the landlord notified the tenants that there would be a third treatment in their unit on February 17, 2014, and the landlord again gave the tenant instructions on preparing their unit. On February 27, 2014 the landlord notified the tenants of another treatment scheduled for March 3, 2014 and gave the tenants treatment preparation instructions.

On March 3, 2014 the technician attended the rental unit, and did not carry out the treatment because the tenants had not prepared the unit. The landlord stated that the technician has previously commented that the tenants never properly cleaned the unit in preparation for treatment, and the technician is now refusing to do a treatment in the unit until it is brought up to standard for treating.

The landlord stated that they have lost tenants in units adjacent to the tenants' unit, and they have done numerous treatments, but the problem will not stop until the unit is properly prepped.

In the hearing the landlord orally requested an order of possession.

Tenants' Response

The tenant acknowledged that there have been cockroaches in the unit, and there have been numerous treatments. The tenant stated that he gave the landlord verbal notice of the cockroach problem. The tenant stated that he and the other tenant prepared the unit as best they could. The tenant stated that the landlord unsuccessfully tried to evict the tenants two years ago for alleged lack of cooperation regarding treatment of bedbugs.

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find that the notice to end tenancy is valid. The tenants did not dispute the landlord's testimony that there has been a cockroach problem and there have been several inspections and treatments. Nor did the tenants deny that they were given treatment instruction preparations before each treatment; the tenants simply stated that they prepared the unit "as best [they] could." I accept the testimony of the landlord that the technician now refuses to treat the unit until it is properly prepped; that other units have been affected by the cockroaches; and the landlord has lost tenants as a result. I find that the tenants' ongoing lack of full cooperation has resulted in potential serious health risks to other occupants of the building.

As I have determined that the notice is valid, I cancel the tenants' application. When a tenant applies to cancel a notice to end tenancy and their application is dismissed, if a landlord in the hearing orally requests an order of possession, section 55 of the Act requires that I grant it. Accordingly, I grant the landlord an order of possession.

Conclusion

The tenants' application is dismissed.

I grant the landlord an order of possession effective two days from service. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: May 7, 2014

Residential Tenancy Branch

