



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ottman Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee.

The tenant and his advocates, the landlord, his lawyer, and an agent attended the teleconference hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The witness was excused until he testified.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the documentary evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-At the beginning of the hearing, the matter of the date of filing for the tenant's application was examined, due to the time constraints under which the tenant was required to file an application in dispute of the Notice.

The Residential Tenancy Branch ("RTB") system showed that the tenant submitted his application on March 20, 2014, which is 5 days past the time allowed to file his application; however, a review of the records in the hearing file shows that the tenant did file an application online on March 14, 2014, within the time allowed to file his application. The RTB system reflects this filing as a "created" date, and not a submitted date, as the application was not properly completed by the tenant, having not listed the sort of resolution for which the tenant applied. The tenant, in a response from the RTB,

was informed that application would not be shown as accepted or submitted until the changes were made to reflect the nature of the tenant's application.

On March 20, 2014, the tenant again filed his application, again without marking that he was seeking cancellation of a 1 Month Notice.

On March 27, 2014, the tenant, through the assistance of one of his advocates, did finally mark on his application, as an amendment, that the tenant was seeking cancellation of a 1 Month Notice.

The landlord's lawyer stated that the envelope containing the tenant's application was postmarked on March 31, 2014.

Although it appears that the tenant did not make a timely application to dispute the Notice, which requires that the tenant file said application within 10 days of receiving the Notice, it appears that the tenant did make a good faith attempt to comply with this requirement, when he made an online application within the 10 days.

Out of an abundance of caution and due to the rules of administrative fair play and natural justice, I made the decision to proceed with the hearing as though the tenant had filed his application within the required time frame.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled and to recover the filing fee?

Background and Evidence

The tenant stated that the tenancy began in December 2003, although I heard testimony that the tenant lived in the rental unit on and off for 20 years.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and provided evidence, both in oral and documentary form, in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice, submitted into evidence, was dated March 15, 2014, was delivered via personal delivery on that date to the tenant, according to the landlord, listing an effective end of tenancy on April 30, 2014.

The causes listed on the Notice alleged that the tenant 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.

Landlord's evidence-

In support of their application, the landlord's counsel submitted that the issues listed in the Notice related to the treatment, or rather a lack of treatment, of bedbugs in the rental unit, which was one of 138 units in a 19 floor building. The counsel submitted that the tenant failed to cooperate in four attempts to treat his rental unit for bedbugs, by not properly preparing the rental unit.

The counsel submitted that the issue first arose when a tenant next door to this rental unit complained to the manager of sighting a bedbug in his rental unit. Upon investigation, one bedbug was found in the neighbouring rental unit, which prompted an inspection of neighbouring rental units, per standard procedure to ensure that an infestation had not spread, according to the counsel.

The counsel further submitted that when the pest control technician inspected this rental unit on February 4, 2014, he observed a bedbug shield on the tenant's bed, which is a preventative measure, and that the technician also observed bedbug fecal matter, bedbug shells, and active bedbugs. On February 5, 2014, the landlord sent a letter to the tenant informing him of the first treatment for bedbugs, for February 17, 2014, with instructions on how to prepare the rental unit for treatment. The tenant was informed that if treatment was not done properly, a widespread infestation could occur. A copy of that letter was submitted.

According to the landlord, the tenant failed to prepare the rental unit for treatment, and was advised in a letter on February 26, 2014, to the tenant, that a second attempt for treatment would be made on March 4, 2014. The letter went on to state that the tenant would receive an "eviction order" if the pest control technician was not able to treat the rental unit for bedbugs on that date. A copy of that letter was submitted.

According to the counsel, the rental unit was not properly prepared, and only a partial treatment was able to be performed.

The legal counsel submitted that the tenant has not yet to date cooperated in preparing the rental unit for treatment.

The landlord's witness, the pest control technician, confirmed that he observed fecal matter and live bedbugs on the tenant's bed on February 4, 2014, and that on February 17, 2014, the date of the first planned treatment, knocked on the door, with no answer. The witness stated that as a treatment had been pre-arranged, he entered the rental unit and found the tenant asleep on the couch, with the rental unit not prepared for treatment.

The witness statement provided also stated that the technician was unable to provide a full treatment for bedbugs in the rental unit on March 4, 2014, as the rental unit was not properly prepared.

The witness submitted that he has not yet been able to provide a full treatment for bedbugs in the rental unit as it was not properly prepared. Some issues identified by the technician were that the night stands and closets were not empty, items were piled on top of the sofa, furniture was not pulled away from the wall, pillows and clothing were not washed and bagged, and the mattress and box springs were not encased.

The landlord submitted that his company is very proactive in addressing bedbug issues and that he tried to convey to the tenant the seriousness of the treatment. The landlord submitted that he has tried to no avail to have the tenant properly prepare the rental unit for treatment, including being given a 7 point plan.

The landlord submitted that the tenant never informed the landlord that he had bedbugs.

Tenant's response-

Tenant advocate PH submitted that a treatment was done on March 4, so that the conditions given in the landlord's letter were met. The advocate submitted that the tenant did cooperate as best as his health would allow.

The tenant submitted, as he has lived at the residential property for the better part of his life, he kept his rental unit fastidiously clean. The tenant submitted that he was not physically capable of meeting all seven criteria set out by the landlord in preparing the rental unit for treatment and that he attempted 4 times to move the furniture to the center of the room.

The tenant submitted that he had asked the resident manager for help, but was denied. The tenant believes he is being targeted by the landlord.

The tenant's relevant documentary evidence included a doctor's statement regarding the medical condition of the tenant and an email dated April 1, 2014, from the pest control technician to the landlord, highlighting the portion of the document stating that at the time of service no active bedbugs were found, among other findings, which were not favourable to the tenant.

Analysis

Section 47 of the Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant 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 landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove the causes listed on their 1 Month Notice to End Tenancy for Cause.

In considering the evidence, I find the landlord submitted sufficient evidence to establish that the tenant has put the residential property at significant risk, as well as seriously jeopardizing the health or safety of other occupants.

The landlord is obligated, under the Act, to ensure that the rental units of all tenants, as in this case a 19 floor, 138 unit building, are maintained in a state of repair complying with the health, safety, and housing standards required by law.

I accept the evidence of the pest control technician that the tenant failed to properly prepare the rental unit for bedbug treatment on at least two occasions prior to the landlord issuing the tenant the 1 Month Notice.

I find that when the tenant failed to prepare his rental unit for treatment after advance, written notice, was warned by the landlord that should he fail to cooperate with the second treatment he would receive an "eviction order," and then failed to properly prepare his rental unit for the second scheduled treatment, after a second written warning, the tenant jeopardized the health and lawful right of other occupants, as well as putting the landlord's property at significant risk.

Had the landlord failed to address the bedbug issue, other tenants could rightly seek remedy and compensation from the landlord.

I find the landlord acted reasonably and properly to ensure that the tenant was aware that his failure to properly prepare his rental unit for bedbug treatment unit would result in the landlord seeking to end the tenancy; despite these warning, the landlord's evidence shows that the tenant failed to have his rental unit properly prepared for treatment a second time.

Considering the totality of the evidence, I find that the landlord has proven that the tenant has put the residential property at significant risk, as well as seriously jeopardizing the health or safety of other occupants. I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice valid and enforceable.

As I have dismissed the tenant's application, I decline to award him recovery of the filing fee.

Under Section 55(1) of the Act, if a tenant's application to cancel a Notice has been dismissed, I may grant the landlord an order of possession upon their oral request at the hearing. As the landlord at the hearing did not make an oral request for an order of possession, I therefore have not granted such order to the landlord.

The landlord is at liberty to make their own application for an order of possession should the tenant fail to vacate the rental unit immediately as the effective end of tenancy date listed on the Notice has passed.

Conclusion

For the reasons stated above, the tenant's application is dismissed, without leave to reapply.

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 9, 2014

Residential Tenancy Branch

