



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROTARY TOWERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LAT, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel the notice to end tenancy for cause; to obtain a Monetary Order for the cost of emergency repairs; to authorise a Tenant to change locks to the rental suite and to recover the filing fee.

An agent for the Landlord and the building manager appeared for the hearing along with the Tenant.

Preliminary Issues

The Tenant testified that he had served a copy of the Application and the Notice of Hearing documents to the Landlord by slipping them underneath the office door. However, while this is not a method of service for these documents allowed under section 89(1) of the Act, the Landlord verified that they had received these documents the next day and wanted to proceed with the hearing as they made an oral request for an Order of Possession. As a result, I considered service of these documents under section 72(1) (c) of the Act.

The Tenant confirmed that he had received the Landlord’s written evidence prior to the hearing and I find that they were served in accordance with the timelines stipulated by the Rules of Procedure.

The Tenant submitted written evidence which he had served to the Landlord with his Application which the Landlord confirmed receipt of with the hearing documents. However, the Tenant submitted additional written evidence which had been served to the Residential Tenancy Branch two business days before this hearing; in addition, the Landlord’s agent stated they had not received a copy of the Tenant’s additional written evidence.

As this additional written evidence was not before the Landlord and had not been served in accordance with the Rules of Procedure, which are also clearly explained in the fact sheet accompanying the hearing documents, I did not allow this evidence. Furthermore, due to the urgency of the situation, I was not willing to adjourn the hearing to allow more time for the Tenant to serve his written evidence to the Landlord.

The hearing lasted over two hours in duration and there was not sufficient time to hear the Tenant's Application for the cost of emergency repairs. As this matter related to costs claimed by the Tenant for issues that were not directly related to the issuing of the notice to end tenancy, I dismiss this portion of the Tenant's Application with leave to re-apply pursuant to section 2.3 of the Rules of Procedure.

Issue(s) to be Decided

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present evidence that met the Rules of Procedure and to cross-examine the other party and witness, and make submissions to me.

I have reviewed the lengthy evidence submissions and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

- Has the Tenant established that the notice to end tenancy ought to be cancelled?
- Has the Tenant provided sufficient evidence that the locks on the rental unit should be changed?
- Is the Landlord entitled to an Order of Possession based on a verbal request pursuant to section 55(1) of the Act?

Background and Evidence

Both parties agreed that the rental of this suite in an apartment building started on October 18, 2009 for a fixed term of six months which then continued on a month to month basis. A written tenancy agreement was signed and rent is currently payable by the Tenant in the amount of \$505.00 on the first day of each month. A condition inspection report was completed at the start of the tenancy and indicates the rental unit was newly renovated and in good clean condition.

The Landlord's agent testified that they have an inherent bed bug problem within the building which they are taking seriously and have an ongoing battle with bed bugs which they are trying to eradicate. The Landlord's agent testified to the following chronological events that led to the Tenant being issued with a 1 Month Notice to End Tenancy for Cause (the "Notice").

The Tenant's unit was inspected by a pest control company on March 17, 2014 after being issued with notice using specially trained K-9 dogs to detect bed bugs. The Landlord provided a service report from the pest control company which documented that positive hits were made on the Tenant's recliner chair and on his bed; the report also indicates that other units within the building were also affected.

As a result of the detection of potential bed bugs inside the Tenant's rental unit, the Landlord arranged treatment consisting of a round of chemical treatment and then a round of steaming and dusting, both of which were essential in killing the bed bug breeding cycle. As a result, the building manager testified that the Tenant was served a 'Notification of Pesticide Use' document (the "Pesticide Notification") on March 21, 2014, which was provided as evidence for the hearing.

The Pesticide Notification stated that the Tenant's rental suite was going to be treated on March 25, 2014 and provided information to the Tenant about the chemicals that were going to be used and instructions on preparations that the Tenant was required to undertake before the treatment; this comprised of a list of items including a requirement to have all accessible furniture moved away from the walls and emptying all the closets and drawers to the center of the room to ensure the success of the treatment.

The building manager testified that the Pesticide Notification was served to the Tenant on March 21, 2014 to give him sufficient time to make the necessary preparations for the treatment and that this standard document contained information for Tenants to contact the pest control company by e-mail, phone or their website if they required any further information.

The Landlord's agent testified that on March 25, 2014 the pest control company entered into the Tenant's rental suite to conduct the treatment and discovered that the Tenant had not undertaken the preparation as detailed in the Pesticide Notification. The Landlord provided a report in support of this which shows that the treatment could not be done because the closets were all full and there was no access to the baseboards which was essential in killing the bed bugs.

As a result, on March 26, 2014 the building manager testified that she served the Tenant with a document titled 'Notice To Tenant' (the "Breach Letter") by attaching this to his door. The letter was provided as evidence for the hearing and states in part, the following:

"This Notice will serve as official warning that it has been reported to the management that you are in breach of your Tenancy Agreement by: Jeopardized the health and safety of another occupant and the landlord by: not preparing your unit for mandatory pest control (bed bugs) on March 25, 2014. Notice of entry was given to you in advance on March 21, 2014. Please call me in case you have any questions. You are hereby given Notice to correct this situation"

[Reproduced as written.]

The building manager testified that the Tenant was served with another Pesticide Notification on the same day (March 26, 2014) by attaching this to the Tenant's door for treatment to take place on April 1, 2014; a copy was provided as evidence.

The Landlord's agent testified that on March 31, 2014 the Tenant refused to have the treatment done for the next day and started to become abusive to the staff and acting towards them in an aggressive and confrontational manner. The building manager submitted a written summary account of the Tenant's behaviour and testified to the account that the Tenant was drunk and called her 14 times during which he verbally abused her because he was angry due to the bed bug treatment. The building manager testified that the insults by the Tenant made it difficult for her to work for the rest of that day.

In addition, the Landlord presented an e-mail from the pest control company in which the author writes that the Tenant had called the company on March 31, 2014 and left a voicemail explaining that he was being evicted and that it was their fault and they were going to pay.

The Landlord's agent submitted that the Tenant made it clear that he was going to refuse entry to his suite and they even attempted to seek the help of the pest control company to help the Tenant to do the necessary preparations at his cost, but the Tenant refused; e-mail exchanges between the pest control company and the Landlord was provided in support of this. The bed bug manager writes in the e-mail that due to the Tenant's refusal to enter his suite they will not be able to prepare it for the treatment. Based on this the Landlord cancelled the treatment scheduled for the next day as they would have to incur the cost of the treatment if the Tenant had refused entry.

As a result, the Landlord served the Tenant personally with the Notice to end the tenancy on March 31, 2014. The Notice was provided as evidence for the hearing and shows an effective end of tenancy date of April 30, 2014. The reasons for ending the tenancy indicated on the second page of the approved form were as follows:

- The Tenant or person permitted on the property by the Tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the Landlord;
 - Seriously jeopardised the health or safety or lawful right of another occupant or the Landlord; and
 - Put the Landlord's property at significant risk.
- The Tenant has engaged in an illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the Landlord; and
 - Jeopardised a lawful right or interest of another occupant or the Landlord.
- Breach of a material term of a tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord's agent testified that during the interim period they were awaiting this hearing, they needed to continue their inspections and treatment of the Tenant's suite for bed bug activity as it had not been treated. The Tenant was provided with another notice titled 'K9 Inspection Notice of Entry' (the "K9 Inspection") which explained that an inspection of the Tenant's suite was going to take place on April 30, 2014.

The Landlord's agent testified that on this date no positive hits were detected inside the Tenant's rental suite but that there was limited access to the baseboards to complete the inspection thoroughly; this was marked as 'limited bb' on the report provided as evidence. The Landlord requested that it be done again as this was a puzzling result being that the Tenant's rental unit had not been treated. On May 13, 2014 another inspection was carried out after the Tenant had been given the K9 Inspection notice. The Landlord's agent testified that the Tenant's suite contained human faeces, urine and other bodily fluids. Following the inspection on this date, the bed bug manager also noted in an e-mail to the Landlord the following, in part:

"I could only inspect what I could as there was blood all over the toilet (so I don't check the bathroom), boogers under almost every chair (but I still inspected them), boogers and bloody Kleenex on the bathroom floor and under the box spring (still inspected what

I could, regardless of how unpleasant it was). Closets were jammed full of stuff, limited access through closets and dressers. No LIVE bedbugs visible, but droppings present on mattresses. Bed linens, chairs, side tables full of what appears to be dust, but actually its human skin. Possible explanation of how a K9 could be thrown off. I was thrown off...”

[Reproduced as written.]

The Landlord submitted that the Tenant is impeding access to this rental suite to allow the effective treatment of the unit and thereby jeopardizing the health and safety of the property and other occupants and this is the reason why they request an Order of Possession.

The Tenant submitted that the Landlord had employed different pest control companies who had used different products and that on three separate occasions: October, 2013, February 6 and February 14, 2014, treatment had been completed and no bed bugs had been found showing that he was in compliance.

When asked about the inspection on March 17, 2014 which was the initial event that culminated in the Tenant being issued with the Notice, the Tenant submitted that he had been verbally advised that there were no issues with his unit and that he was not made aware of a bed bug problem in his unit.

The Tenant made lengthy submissions about what had occurred after the Notice had been served to him but when he was questioned about the events leading up to him being served the Notice, the Tenant stated that he did not receive any paperwork following the inspection of his unit on March 17, 2014 and did not receive the Pesticide Notification on March 21, 2014 and therefore was not aware of the inspection result or treatment date that the Landlord claimed was served to him.

The Tenant testified that he had received the Breach Letter and the second Pesticide Notification at 3 p.m. on March 28, 2014 for the April 1, 2014 treatment date and that he hired an assistant to pack (and later unpack) his display cases, hutches and wall displays as per the written instructions.

The Tenant submitted that he has a respiratory condition and requested information from the Landlord and the pest control company about the chemicals they would be using as these could exacerbate his medical condition. The Tenant testified that he got no answers back from the pest control company or the Landlord.

The Tenant submitted that he did request help from the Landlord on March 30, 2014 but was told that no one was working on this date and that he should hire someone at his own cost.

The Tenant contradicted the Landlord's agent's testimony explaining that on the evening of March 31, 2014 he prepared his rental suite for the treatment and continued to make contact with the Landlord to get information on the chemicals that were going to be used, but no one got back to him; instead he was given the Notice to end his tenancy and the building manager refused to enter his suite to see that his suite was adequately prepared.

The Tenant testified that he was ready for the treatment on April 1, 2014 but no one arrived and no written notice had been given to him that the treatment was not going to take place.

The Tenant submitted that he had no bites on him and therefore this indicated that there was no bed bug activity in his rental suite. The Tenant referred to the Landlord's evidence and submitted that the inspection report completed on April 30, 2014 shows that there were no bed bugs present in this unit and that the Landlord's requests for constant inspections is now amounting to harassment.

The Tenant admitted to the state of his unit on May 13, 2014 as described by the Landlord and explained that he had a medical condition that led to the soiling of the suite after which he had to go to the hospital and remained there during the time the inspection was done.

The Tenant called a witness for the hearing. The witness testified that she often visited the Tenant and has never been bitten by bed bugs. The witness further testified that most notices to Tenants in the building are served by attaching them on the door or slipped under the door. The witness confirmed the Tenant's account that he was under medical supervision for a number of medical issues including asthma and eczema. The Tenant's witness testified that the Tenant was released from hospital on May 22, 2014 and that the Tenant had made preparations for the treatment of his suite on April 1, 2014. The witness testified that she had observed no faeces or bodily fluids in the Tenant's suite when she visited him.

The Landlord's agent did not cross examine the Tenant's witness but contradicted the Tenant's evidence in relation to the fact that he had not been served with any paperwork relating to the inspection and treatments before March 28, 2014. The Landlord's agent referred me to the Tenant's written evidence provided with his

Application which contained the K9 Inspection notice for entry into the Tenant's suite on March 17, 2014 and submits that if the Tenant did not receive any paperwork then how did he come to be in possession of this document.

The Landlord called the bed bug manager as a witness for the hearing. The bed bug manager gave a brief overview on how bed bugs are treated and testified that not every person will show visible signs of bites due to bed bugs. The bed bug manager confirmed the details explained in his emails (above) and confirmed that the K9 dog could have been put off by the bodily fluids left by the Tenant which led to the negative hit in the Tenant's rental suite.

The bed bug manager testified that they are committed to getting rid of the bed bugs in the building as this is their mandate and that this is difficult to achieve without consistent inspection and treatment cycles to ensure that the pests have been eradicated.

The Landlord's agent questioned the bed bug manager about their procedures when Tenants do not have their rental suite ready for inspection or treatment. The bed bug manager testified that this does occur and if the suite is not adequately prepared then the treatment cannot go ahead and is re-scheduled.

The Landlord's agent then submitted that while she accepted that the Tenant's suite was soiled in the manner in which it was found on May 13, 2014, this did not explain the human skin that was also detected by the bed bug manager and that this dust had nothing to do with the reasons the Tenant testified he was hospitalised for. The Tenant agreed that a lot of the human skin in his suite was due to his eczema and the Landlord's agent submitted that the state of the Tenant's suite is such that it is a prime breeding ground for bed bugs and this poses a significant threat to other residents.

In the lengthy cross examination of the bed bug manager by the Tenant, the bed bug manager testified that once they receive a positive hit on a suite, they prepare the Pesticide Notifications and e-mail them to the Landlord; the Landlord will in turn serve this to the affected resident. The Tenant asked the bed bug manager whether these notices can be missed and the bed bug manager replied that this has occurred in the past but is rare and any miscommunications are resolved through rescheduling.

Analysis

Firstly, I find that the Notice was issued to the Tenant in the correct form and contained the required contents as required by the Act and that it was served and received by the

Tenant on March 31, 2014. As a result, I find that the Tenant disputed the Notice within the time limits afforded under the Act.

When a Landlord issues the Tenant with a Notice for the reasons documented above, the Landlord must prove, on the balance of probabilities, at least one of the reasons on the Notice for the tenancy to be ended.

The Tenant denied that the K9 Inspection notice for the March 17, 2014 inspection and the resulting subsequent Pesticide Notification issued on March 21, 2014 for treatment to take place on March 25, 2014 was not served to him. However, I find that the Tenant's evidence that he was not served with these documents is contradicted by the fact that he was in possession of the K9 Inspection notice for March 17, 2014 which was submitted with the Application on April 10, 2014, well in advance of receiving the Landlord's evidence on May 21, 2014. In addition, I accept the affirmed testimony of the building manager that the Tenant was served the Pesticide Notification on March 21, 2014 for the March 25, 2014 treatment date. Therefore, I find that there is sufficient evidence that the Tenant was, on the balance of probabilities, served with these notices which he claimed he was not.

In examining the reason on the Notice for ending the tenancy, I focus my attention firstly to the Tenant's breach of a material term which was not corrected after the Tenant was given written notice to do so.

I accept the Landlord's testimony, the bed bug manager's testimony and the written reports showing that the rental suite was unable to be treated on March 25, 2014 and that the Tenant had not adequately prepared his rental suite for the treatment after determining that he had been served notice of this treatment date.

As a result, I accept the Landlord's evidence that the Tenant was served a Breach Letter following the inability of the pest control company to treat the rental suite and that this was served to the Tenant by attaching it to the Tenant's door on March 26, 2014. The Tenant testified that he did not receive this Breach Letter and the Pesticide Notification for April 1, 2014 treatment until March 28, 2014 and this did not give him enough time to prepare for the treatment. However, the Tenant also submits that he did indeed get his suite ready for the treatment on April 1, 2014 but no one arrived to conduct the treatment.

While the Landlord did not provide direct evidence of the state of the Tenant's suite on April 1, 2014, the Landlord did provide sufficient written evidence to support her testimony that the Tenant's actions clearly indicated that he was not going to allow

the treatment to take place. This took the form of testimony from the building manager and the independent testimony of the bed bug manger.

The Tenant relied on witness testimony from a friend who frequented his unit regularly and based on their relationship as friends, I find that the witness evidence is not independent and therefore I place little evidentiary value on the witness testimony. As a result, I find that the Tenant provided insufficient evidence to show that his rental suite had been adequately prepared for the treatment on April 1, 2014.

The Tenant testified that he had tried to make contact with the pest control company and the Landlord asking them about the chemicals that were going to be used in the course of the treatment but he got no response. However, the Landlord's evidence does indicate that the Tenant made contact with the building manager and the pest control company but this was to verbally abuse the parties and threaten the pest control company. Apart from contemporaneous notes the Tenant referred to on one of the Pesticide Notifications issued to him, I find that the Tenant provided insufficient evidence to show that he was trying to address issues with the Landlord and pest control company before the treatment was going to take place.

I further find that the Landlord had provided sufficient information to the Tenant on the Pesticide Notifications regarding the chemicals that were going to be used during the treatment and that the Tenant had sufficient time to conduct his own enquiries about the effects of these chemicals on his health, through other sources such as his personal physician rather than taking an aggressive approach with the Landlord and the pest control company. In addition, if the Tenant submits that these were issues that prevented him from preparing adequately for the treatment then his claim that he had his suite available for treatment on April 1, 2014 is undermined.

Section 32 of the Act requires a Landlord to maintain residential property in a state of repair that complies with the health and safety and housing standards required by law.

While I am sympathetic to the Tenant for having to go through a series of sustained inspection and treatment cycles due to an inherent issue within the building, this needs to be balanced with the Landlord's obligation to repair and maintain the unit in accordance with the Act. Instead of impeding the treatment of his rental suite it would have been more appropriate for the Tenant to seek other remedies under the Act. In this case, I find that failure of a Tenant to not have their suite ready for bed bug treatments which are essential for the safety of the Tenant himself and other residents in the building was a breach of a material term of the tenancy.

I also find that the Tenant had been given sufficient written notice of the breach, and taking into account the urgency of the need to treat the Tenant's rental suite, reasonable time and options were given to the Tenant to prepare for the treatment which the Tenant again failed to facilitate after being given the Breach Letter.

In my analysis of the evidence provided by both parties, I find that the evidence of the Landlord is more compelling on the balance of probabilities than the evidence provided by the Tenant.

Based on the foregoing, I find that the lack of Tenant action in adhering to the written notices provided to him has put the property at significant risk and jeopardised the health and safety of the Landlord and the other residents of the building who were not affected by the bed bugs.

For these reasons, I find that the Landlord has proved the Notice in this respect and there is no need for me to analyse the evidence in relation to the reminder of the reasons on the Notice.

Section 55(1) of the Act states that if a Tenant makes an Application to dispute a Notice and the Notice is upheld, the arbitrator must grant an Order of Possession if the Landlord makes an oral request during the hearing.

The Landlord provided evidence that rent payments that had been made since the Tenant had been issued with the Notice had been accepted for use and occupancy only and therefore I find that the tenancy has not been re-instated. As the Landlord made an oral request, I grant the Landlord an Order of Possession.

As the Tenant has paid for June, 2014 rent, the Landlord is entitled to an Order of Possession which is effective at the end of June, 2014. If the Tenant decides to leave earlier than the effective date of the Order of Possession, the Tenant would be entitled to a prorated amount of rent for the remainder of the days after he fully vacated the suite.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application to cancel the Notice issued on March 31, 2014.

As I have determined that the tenancy will be ending, I dismiss the Tenant's Application to authorise the Tenant to change the locks to the rental suite.

As the Tenant was not successful in cancelling the Notice, I dismiss the Tenant's Application to recover the filing fee.

The Tenant's Application for the cost of emergency repairs is dismissed with leave to re-apply.

The Landlord is granted an Order of Possession which is effective **at 1:00 pm on June 30, 2014**. This order must be served onto the Tenant and if the Tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court as an order of that court.

The Tenant is cautioned that he is still required to follow the Act in relation to the Landlord's obligations to maintain the rental suite regarding the beg bug eradication.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 04, 2014

Residential Tenancy Branch

