



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 928 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 to cancel a notice to end tenancy.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence. The tenant was assisted by an advocate.

At the start of the hearing, the tenant's advocate asked that I set aside the landlord's evidence package on the basis that it was served late.

Issue(s) to be Decided

Should the landlord's evidence package be set aside?
Should the notice to end tenancy be cancelled?

Background and Evidence

The landlord gave evidence he served the tenant with a Notice to End Tenancy for Cause (the "Notice") by personal service on April 29, 2014. The Notice specifies a move-out date, or effective date, of May 31, 2014. The Notice provides the following reasons for the Notice:

- 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
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- Tenant has caused extraordinary damage to the unit/site
- Tenant has not done required repairs of damage to the unit/site

The landlord confirmed that each of these four reasons relate to a bedbug infestation in the tenant's rental unit.

Procedural issue – Landlord's Evidence

The tenant's advocate gave evidence that the tenant did not receive the landlord's evidence package until June 16, 2014 when he found it attached to his door. I

neglected to ask and the landlord did not state what day he attached the landlord's evidence package to the tenant's door. The RTB received the landlord's evidence package on June 13, 2014.

The landlord's evidence package contains the following documents:

- Tenancy agreement dated May 1, 2012
- Notice to end tenancy dated April 29, 2014
- Letter dated April 29, 2014 from building manager to tenant regarding bedbug infestation
- Undated letter from building manager to tenant advising tenant that the building manager has arranged to have the tenant's mattress and garbage removed from the rental unit on May 4, 2014
- Letter dated April 28, 2014 from a pest control company to the landlord regarding a bedbug infestation in the tenant's rental unit
- Seven letters from other tenants in the rental building, describing the negative impact of the bedbug infestation on them.
- Three photocopies photographs showing bedbug infestation

The April 28, 2014 letter from the pest control company reads as follows [the tenant's unit is 306]:

"This is to certify that Building manager called our company on April 13, 2014 for bed bugs complaint in suite 302; we did thorough investigation found only one bed bugs and treated the suite; we did hallways inspection and found lot of live bed bugs by entrance along door jam of suite 306. We advise to manager that we need to inspect the all surrounding suites asap. On April 18, 2014 we did inspection of all surroundings suites 301, 302, 304, 305, 306, 307 and reported suite 306 with very severe bed bugs infestation and clutter. The infestation were reported on every single articles in the suite and on the wall as well inside the electrical outlet. The walls reported black with infestation. The tenant started moving stuff in the hallways with live bugs on it. Due to the heavy infestation and not reported on time the bed bugs migrated to adjacent suites 305, 302, 307; no bed bugs reported in other suites. The tenant in suite 306 advised to bag everything in the suite including mattresses and boxspring and dispose of asap. Every content in the suite must be removed from suite none of article is treatable and launder all cloths.

We have done follow up service in suite 306 on April 25, 2014 and found that tenant has not removed anything from the suite however, we have done treatment to stop bed bugs movement to adjacent suites. This infestation is going to cause huge safety and security concern to all the tenant in the building if not addressed immediately.

We like to inform you that our company will not provide further service into suite 306 unless our instruction followed and will not responsible for bed bugs spread in the building.”

Bedbug Infestation

The site manager gave evidence that he contacted a pest control company on April 13, 2014 in response to the concerns of another tenant on the 3rd floor about bedbugs. On April 18, 2014, the site manager and pest control company representative together inspected suites 1, 2, 4, 5, 6, and 7 on the 3rd floor. The site manager’s evidence was that the tenant was not home at the time of the April 18th inspection.

The site manager’s evidence is that the rental unit contained a great deal of garbage and furniture. They immediately noticed bedbug markings on the wall. The pest control company representative told the site manager that he had not seen such a bad infestation in a long time. The site manager said that he took the photos that day that were sent in as evidence. The photographs appear to confirm a significant infestation of bedbugs.

The site manager gave evidence that he saw the tenant in the hallway the next day, April 19th, and told the tenant there was a really bad problem with bedbugs. The site manager said he asked the tenant “Is there any way you can get rid of your mattress?” The site manager’s evidence is that the tenant told him he would try to find someone to help him move. The site manager said that the tenant did find movers but the movers only took a few things, and cancelled on the tenant the day they were expected to move his possessions.

The site manager later gave evidence that what he said to the tenant on April 19th was “Is there any way you can get movers to move all your stuff out?” The site manager said this was so that the rental unit could be painted (as part of the bedbug treatment). The site manager said he gave the tenant a whole box of bags, and told him to do laundry and put his clean laundry into the bags. Asked if he gave the tenant any other specific instructions, the site manager said he didn’t want to go into any great detail because they were standing in the hallway at the time and he did not want to make the tenant feel uncomfortable. He did say to the tenant “I’m worried about it spreading”.

Asked if he had any other conversations with the tenant regarding the bedbugs between April 19 and April 29, the site manager said he did not. However, the site manager also said that, at some point between April 18 and April 25 he gave the tenant mattress covers and told him “Cover your mattress to see if you can find someone to move your stuff.”

The site manager’s evidence is that the tenant got movers to come about 5 to 7 days later, prior to the Notice being issued.

The landlord provided a copy of an undated note from the landlord to the tenant that reads:

[Tenant name] please be informed that we have arranged to have your garbage and mattress removed so we can do a proper cleaning and fumigation of your room to lessen the chances of the spreading of the bed bug infestation. We will have people come pick your garbage on Monday May 4th 2014 in the afternoon we will provide you with extra bags so on the day of the removal you can Double Bag the garbage and Mattresses please try to make it completely sealed ready for the removal guys and after the things are gone we will re-spray the room.

Please put your clothes in separate bags and bag everything air tight, we will have to move almost everything in order to lessen the chances of the spreading. This is our third visit to arrange some sort of solution to this bed bug problem and must be able to act quickly to help prevent an outbreak.

[Tenant name] please call me to arrange the details and I'll need some information from you as well.

The site manager gave evidence that they had still not been able to treat the rental unit fully at the time of the hearing, because the tenant was still there. His evidence is that they need to clean and paint, need to open electrical outlets, and the room needs to be gutted to do this work. The landlord did not provide any information from a pest control company to confirm the work that remains to be done.

The tenant agreed that the site manager spoke to him on April 19th. He said the site manager told him to move the mattress and his TV. His evidence is that when he moved in he only had a small bag of clothes; the site manager gave him mattresses and a TV from someone who was moving out. The tenant provided evidence that he went to a local community centre to try to find movers who could help him. He arranged for movers to come to the building, but says that once the movers were there they demanded more money than they had originally asked for. He did not have enough money to pay them, and so the movers did not move his things. He returned to the community centre and told them what happened, and a worker tried to find movers for him.

The tenant's position is that he made a reasonable effort to follow his landlord's directions, within his means and his capability. The tenant now has a new TV and a chair, and is using a small mattress from a camping store.

Analysis

Procedural issue – Landlord's Evidence

Rule 4.1 of the RTB Rules of Procedure "Serving the respondent's evidence" states:

(a) If the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents, photographs, video or audio evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the “Definitions” part of the Rules of Procedure.

Rule 4.1 directs that a definition of “days” be used that is different from the definition set out in the *Interpretation Act*, [R.S.B.C.] c. 238 (the “Interpretation Act”). However, since the Interpretation Act is a statute of British Columbia, it takes precedence over the RTB Rules of Procedure. For that reason, the phrase “at least five (5) days” as set out in Rule 4.1 must be interpreted according to Section 25 of the Interpretation Act (and not the definition contained in the RTB Rules of Procedure). The relevant part of Section 25 of the Interpretation Act reads:

(4) In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days, weeks, months or years, the first and last days must be excluded.

The hearing was scheduled for June 18, 2014. The respondent’s evidence was therefore required to be received by the RTB and served on the applicant on or before June 12, 2014, since this allows five days excluding the first and last day.

The RTB copy of the landlord’s evidence is date-stamped June 13, 2014. I therefore find the landlord’s evidence was received by the RTB after the deadline. I do not know whether the tenant was served late, but I accept the tenant’s evidence that he discovered the evidence package attached to his door on June 16, 2014.

The RTB Rules of Procedure are silent as to what happens in the event that evidence is served in advance of the hearing but not within the timeline set out in the Rules. I conclude that I have the authority to consider such late evidence on the basis of Section 64(3)(a) of the Act, which reads:

(3) Subject to the rules of procedure established under section 9(3) [director’s powers and duties], the director may
(a) deal with any procedural issue that arises,

I will allow the landlord’s evidence package into evidence for the following reasons. I find that the documents in the landlord’s evidence package are either ones the tenant already had (the tenancy agreement and the Notice itself) or are relevant to the matters at issue and of significant probative value (such as the April 28, 2014 letter from the pest control company). I find the tenant is not significantly prejudiced by my considering the late evidence, especially given my decision regarding the Notice.

Reason for Eviction – Bedbug Infestation

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. Here, the landlord has specified four causes for ending the tenancy. If the landlord proves at least one of those causes, the Notice will not be cancelled. However, if the landlord does not prove any of the specified causes, then I must cancel the Notice.

In this case, all four causes relate to the presence of a bedbug infestation in the tenant's unit. I accept the evidence of the landlord and the pest control company that there is a significant bedbug infestation in the tenant's unit. As issue, however, is whether the tenant has engaged in blameworthy conduct that would justify ending his tenancy for one or more of the four reasons set out in the Notice.

The existence of a bedbug infestation in the rental unit is not, in itself, adequate cause to end the tenancy. In my view, the landlord must prove that the tenant deliberately or negligently caused the infestation or that the tenant did not reasonably cooperate with the landlord's efforts to end the infestation.

It is often difficult to establish how a bedbug infestation started. In this case, almost two years elapsed between the start of the tenancy on May 1, 2012 and the discovery of the infestation on April 18, 2014. I accept the evidence of the tenant that he moved into the rental unit with almost no possessions, and acquired a second hand mattress and TV that were left behind by former tenants. I accept the landlord's evidence that there was a great deal of furniture and belongings in the rental unit by April 18, 2014. During those two years, the tenant acquired many items and some were second-hand. It is possible that bedbugs entered the rental unit in some piece of furniture. I find that the landlord has not established that any negligent act of the tenant caused the bedbug infestation in the first place.

The bedbug infestation was discovered on April 18, 2014 and the Notice was served on April 29, 2014. At issue is whether the tenant failed to reasonably cooperate with the landlord's efforts to end the infestation during that 11 day period.

I find that the landlord did not provide the tenant with clear and specific instructions regarding what the tenant should do and by what deadline. In fact, the landlord's words "Is there any way you can get movers to move all your stuff out?" sound more like the landlord is asking the tenant for assistance, rather than setting out a requirement for continued tenancy. I accept the evidence of both parties that the tenant was successful in finding movers to help him, within about a week of April 18th, but the movers refused to complete the job. The tenant then cooperated with the landlord when the landlord arranged movers to dispose of all the tenant's furniture on May 4, 2014.

I note that the April 28, 2014 letter from the pest control company is misleading, since it states "The tenant in suite 306 advised to bag everything in the suite including mattresses and box spring and dispose of everything asap. Every content in the suite

must be removed from suite none of article is treatable and launder all cloths.” This reads as though the pest control company gave advice to the tenant, which they could not have done since the tenant was not at home during their visit. I find the site manager’s conversation with the tenant on April 19th was the only instruction that the tenant received.

If the landlord is correct that the infestation is so advanced that the suite must be gutted, then there may have been no actions the tenant could have taken to assist in solving the problem, even if properly instructed, by the time the infestation was discovered on April 18th. For these reasons, I find the landlord has not proven that the tenant failed to reasonably cooperate with the landlord’s efforts to address the problem during the 11 day period between the discovery and the Notice being served.

The landlord has not proven that the tenant, through his negligence, caused the infestation or that the tenant failed to reasonably cooperate with the landlord’s efforts to address the problem. I therefore find that the landlord has not established that the tenant engaged in blameworthy conduct sufficient to prove one or more of the four stated reasons for ending the tenancy.

Since the landlord has not proven any of the four stated reasons for ending the tenancy, the Notice is cancelled.

Conclusion

The notice to end tenancy is cancelled.

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: June 20, 2014

Residential Tenancy Branch

