



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOUNT BENSON SENIOR CITIZEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order canceling a Notice to End Tenancy given for cause.

The Landlord's Executive Administrator, D.S., as well as the building manager, K.M. appeared on behalf of the Landlord. The Tenant appeared on his own behalf.

The hearing process was explained and the participants were asked if they had any questions. All participants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Notice to End Tenancy given for cause be cancelled?

Background and Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement. The Tenancy began on February 7, 2014. Monthly rent was payable in the amount of \$450.00 per month including a \$25.00 charge for cablevision.

The Building Manager, K.M., testified that the rental unit is in a 14 unit three story building. He stated that two units occupy the basement, with six units on the second and third floor. The subject unit is on the second floor.

The Week Prior to August 26, 2014

K.M. testified that approximately one week before August 26, 2014, he inspected the 14 units for bed bugs. K.M. testified that he and T., an employee of T.R.E. Inc. T. (neither K.M. nor D.S. could recall his surname) inspected all units on that date. K.M. testified that T. observed 10-15 casings in the subject rental unit. Evidence of bedbugs was also found in units 204, 302, 303 and 304.

The Tenant adamantly denies that any such evidence of bed bugs was found in his rental unit. He testified that in fact only one suspected casing was found, and it was later determined to be a "ball of fluff".

August 25, 2014

On August 25, 2014 the Landlord issued a Notice of Entry indicating the Landlord wished to enter the rental unit for "Pest control treatment" and "heat treatment bugs" on August 26, 2014 at 9:30 a.m. (the "Notice of Entry").

K.M., testified that he delivered the Notice of Entry by hand to the Tenant at 9:00 or 9:30 a.m. on the day prior. At this time, the Tenant expressed his concerns regarding heat treatment and the possible damage to electronics posed by such treatment. K.M. stated that he offered to move the Tenants belongings to a vacant unit to prevent such damage.

The Tenant testified that at the same time as he received the Notice of Entry, he received a document setting out information on how to prepare for the treatment. Upon receiving the information, he performed an internet search on the company, T.R.E. Inc., and could not locate information which satisfied him this was a legitimate company. He also failed to find confirmation that T.R.E. Inc. was licensed or insured.

The Tenant testified that he contacted his insurance company and was informed that he would not be covered for any loss should T.R.E. Inc. cause damage to his personal possessions or electronics during the treatment.

The Tenant testified that he then called another pest removal company, O. He testified that the individual he spoke to at O stated that they did not use heat treatment for the removal of bed bugs as the likelihood of damage was too high and the insurance rates were prohibitive.

August 26, 2014

The Tenant testified that on August 26, 2014 when K.M. and T. arrived to begin treatment of the Tenant's rental unit, the Tenant asked to see T.'s proof of insurance. T. declined to provide such proof.

The Tenant then attempted to speak to K.M. about his concerns with heat treatment and conveyed the information he received from O. He says that he offered to pay for his own inspection and treatment, if required, as he continued to believe that his unit did not have bed bugs and was also very concerned with the use of heat treatment.

K.M. testified that he reiterated his offer to assist the Tenant in moving his electronics on the day scheduled for treatment, August 26, 2014, but that the Tenant began asking that they confirm the Landlord would be liable to cover any potential damage to the Tenant's electronics. K.M. refused to provide such an assurance.

Two hours later, the Landlord issued a Notice to End Tenancy for Cause citing the following reasons:

1. The Tenant or a person permitted on the property by the tenant has:
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - c. put the landlord's property at significant risk
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

("The Notice to End Tenancy").

Analysis

The relevant portion of Section 47 of the Act provides as follows:

- (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies
 - ...
 - (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) Put the landlord's property at significant risk.

The Tenant applied, pursuant to section 47(4) of the Act for an order setting aside the Notice to End Tenancy.

On the balance of probabilities, I find that the Landlord has failed to meet the burden of proving that the Tenant has *significantly* interfered with or unreasonably disturbed another occupant or the landlord, *seriously* jeopardized the health or safety or lawful right or interest of the landlord or another occupant or put the landlord's property at *significant* risk.

The company contacted by O confirmed they do not perform heat treatment because of the associated risks and high insurance costs. The Landlord confirmed their chosen company did not have or was unlikely to have such insurance. Such information confirms the potential risk involved in heat treatment.

The Tenant, in exercising due diligence, and attempting to minimize any damage to his property, made reasonable enquiries as to the legitimacy of the Landlord's chosen company, and the existence of any liability insurance.

The Tenant testified that he had computer equipment, which had been set up specifically to coordinate with his hearing aids. He was concerned about the potential damage to this computer equipment, both during the treatment, or if it were moved from his rental unit. He also expressed concerns about the cost of having to pay to have the equipment set up again after the treatment.

While the Landlord refused to provide the Tenant with an assurance that any damage to his personal possessions would be at the Landlord's expense, it is the case that if the Landlord, or their agents, damage the Tenant's property, the Landlord is indeed responsible. The Landlord, in failing to adequately address the Tenant's concerns regarding the Landlord's preferred company's lack of insurance, and refusing to provide an assurance to the Tenant that they would be responsible for any such damage, only added to the Tenant's already significant concerns.

The Tenant offered alternate treatment, including paying for the cost of this treatment. The Tenant, in attempting to address the Landlord's concerns over the possible existence of bed bugs, while at the same time, taking reasonable steps to protect his own property, offered a reasonable alternative.

Although the Landlord has the right to choose what kind of treatment should be used to address the potential bed bug issue, when such a treatment is complicated and has identifiable risk, 24 hours-notice of such entry may not be sufficient.

Further, if the Landlord chooses to use uninsured companies, it is incumbent on them to appropriately address tenant's concerns about liability.

The Landlord confirmed that they did not discuss the issue of bed bugs with the Tenant after issuing the Notice to End Tenancy. In issuing the Notice to End Tenancy within two hours of the Landlord's attempt to enter the rental unit, the Landlord failed to give the Tenant a reasonable amount of time to correct any alleged breach of the tenancy agreement.

I therefore grant the Tenant's request and cancel the Notice to End Tenancy.

The Tenant, having been successful in his application, is entitled to recovery of the \$50.00 filing fee. This amount shall be credited against his next month's rent such that it will be reduced by \$50.00.

Further, and while I decline to make a binding Order in this regard, I make the following suggestions:

1. The Landlord should give more notice to the Tenant, and other occupants of the rental building, in the circumstances of entry which may cause damage to Tenant's property; and
2. The landlord should be aware that there may be equipment that could be damaged with such treatment, and should be prepared to acknowledge the Landlord's liability for any related loss to tenants.

Conclusion

The Landlord has failed to establish cause for ending the tenancy. Therefore I order that the Notice is set aside. The Tenant is entitled to recovery of the filing fee.

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: October 30, 2014.

Residential Tenancy Branch

