



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MT, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy, for more time to do so and for the recovery of the filing fee. The hearing was conducted in person and both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The hearing was conducted as a face to face hearing at the tenant's request. The tenant has suffered three strokes and has difficulty with reading and communicating. The tenant stated that conducting a conversation by telephone was particularly difficult for him and filed doctors' notes in support of the condition of his health.

Prior to and during the hearing, the agent for the landlord (referred to as the landlord) requested that a property manager be allowed to join the hearing by telephone. Since there were already two managers and one assistant manager attending the hearing and since it would not be fair to the tenant to conduct part of the hearing by telephone, I denied the landlord's request to allow an additional manager to attend the hearing by telephone.

All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over approximately 90 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issue to be Decided

Did the tenant apply to dispute the notice to end tenancy in a timely manner? Did the tenant have circumstances that were out of his control and prevented him from making application in a timely manner? Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on June 01, 2012. The current monthly rent is \$409.00. The rental unit consists of an apartment that is located in a building complex that houses other rental units.

The landlord stated that complaints were received from other occupants of the building regarding offensive odors emanating from the rental unit. In June 2013, a fire inspection was conducted by the fire department and the inspector reported the presence of a fire hazard, from the clutter inside the rental unit. In order to comply with the recommendations of the fire inspector, on June 21, 2013, the landlord served the tenant with a notice to remove the clutter and clean the rental unit.

On October 16, 2013, the landlord served the tenant with a notice of inspection to be conducted on October 18, 2013. The landlord stated that the tenant refused entry and behaved in an intimidating manner. The tenant denied allegations of intimidation and stated that he did not threaten the safety of the landlord. The tenant stated that he was trying to speak with her but because of his condition, he gets frustrated at his difficulty in expressing himself and the landlord read it as a threat of violence.

On November 18, 2013, during a routine inspection for bed bugs, the rental unit was found to be infected. A series of notices were served to the tenant informing him of the steps required to be performed by him, in preparation for multiple treatments. The tenant did his best to prepare for the treatment of bed bugs by the pest control company. The reports indicate that some preparations were inadequate while others ranged from okay to good.

During the hearing all notices and results of treatments were discussed. Despite the diligent efforts of the landlord to eradicate the bed bug infection by multiple treatments, the problem persisted. The tenant complied by getting rid of his wooden bed frame and his stationary bicycle. The landlord stated that the tenant did not do his laundry regularly while the tenant said he did.

In February and March 2014, the inspection reports indicated that the problem had been resolved. However in July 2014, the problem resurfaced. The tenant was given notice to prepare for treatment and the pest control company found that the tenant had prepared well. The tenant was provided with bed covers when his own covers got ripped.

Despite the continued efforts of the landlord, an inspection on September 24, 2014 found the presence of bed bugs. On September 27, 2014, the landlord served the tenant with a notice to end tenancy for cause.

The reasons for the notice to end tenancy are as follows:

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
- put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- jeopardize a lawful right or interest of another occupant or the landlord

Tenant has not done required repairs of damage to the unit/site

The landlord testified that she served the notice by posting it on the front door. The tenant found the notice but since he is unable to read did not realize its significance. The tenant eventually requested assistance from his father and made application to dispute the notice on October 17, 2014.

Analysis

The notice to end tenancy was posted on the front door on September 27, 2014. Section 90 of the *Act* deems the tenant was served on October 30, 2014. The tenant had ten days to dispute the notice but failed to do so within the legislated time limit. The tenant testified that due to his condition, he is unable to read and therefore did not understand that he was required to dispute the notice within ten days. Based on the doctors' notes filed into evidence and based on the manner in which the tenant participated in the hearing, I accept that the tenant had circumstances which were beyond his control which prevented him from disputing the notice in a timely manner. Therefore I allow the tenant additional time to dispute the notice.

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged.

While the landlord stated that she had received several complaints from other residents regarding odours from the rental unit, the landlord did file any evidence by way of written letters from other occupants that explain the nature of the complaints.

The landlord also did not file any photographs of the clutter in the rental unit which was denied by the tenant.

Based on all the evidence before me, I find that the bed bug problem is ongoing and that the landlord acted in a responsible manner and made considerable efforts to eradicate the bed bug infection. I further find that the tenant cooperated with the landlord to the best of his abilities, keeping in mind that the tenant has a health condition that interferes with his ability to read and communicate.

I am satisfied that the landlord went to great lengths to keep the rental unit and surrounding units, bed bug free and incurred considerable expense doing so, but I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated September 27, 2014. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving other occupants of the residential complex, reason to complain. The tenant must also seek social assistance to be in a position to fully cooperate with the landlord's efforts to free the complex of an infection by bed bugs. I find it timely to put the tenant on notice that, if such issues were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenant may make a onetime deduction of \$50.00 from a future rent towards the 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: November 27, 2014

Residential Tenancy Branch

