



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS INTERNATIONAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47.

Service:

The Notice to End Tenancy is dated September 23, 2014 to be effective October 31, 2014 and the tenant confirmed it was served on him by registered mail before the end of September. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy? Or is the tenant entitled to any relief?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in February 2013, it is now a month to month tenancy, rent is \$665 a month and a security deposit of \$325 was paid in January 2013. The landlord served a Notice to End Tenancy under section 47 of the Act for the following reasons:

- a) The tenant has seriously jeopardized the health and safety of other residents or the landlord; and
- b) The tenant has put the landlord's property at significant risk.

The landlord provided several reports in evidence. One stated a leak came from this unit but the tenant did not report it so they had to damage two other bathrooms before they could determine it came from this unit; then the tenant would not allow the plumber access and continually said the leak was not from his unit. However, the plumber had used a camera to determine the source but the management had to threaten to call the police to gain access. The plumber found a hole in the kitchen sink and a bucket under it. The same report notes that the tenant denied access for flea treatment and the

plumber said he does not want to enter the unit until it is pest free. A second report notes a pest control inspection on September 19, 2014 identified that he had bed bugs, fleas and cockroaches in his unit (fleas were on the cats in his unit). It states that after he got notice of entry for treatment, he called the managers and refused access. The report also notes that the tenant is storing wood on his balcony which is contrary to the terms of his tenancy agreement and also can attract pests. The report notes the tenant is endangering the health of other tenants in the building by his behaviour.

Another report from the service centre cites problems with their interaction with the tenant calling them frequently and being rude and refusing to listen to what they have to say when it is an issue not in their control, such as the rent, and they need to refer him to another person. Administration sent a history, noting inspection on September 19, 2014 showing unit has fleas, no treatment on September 26 as tenant not home, flea treatment on October 3 when cockroaches were also seen and bed bug droppings and eggs on the bedframe, October 14, attempted treatment but no preparation done (tenant advised to prepare for next week), October 22, 2014 attempted treatment but no preparation done. The pest control company verified this on a report and on a separate report on October 9, 2014 said that this tenant had called, spent the better portion of the time yelling and being rude to the point they had to hang up on him. They said he was denying he had bed bugs, was videotaping the technicians, taking them to court, would book an inspection and not pay for it and threatening to sue them. On October 9, 2014, management reported he telephoned them insisting he has no bed bugs, does not want an inspection and threatening to call the police.

In an email to the landlord on September 22, 2014, the tenant says there are no fleas in his home, a spray is not needed, he does not want air borne agents in his home to treat cockroaches but baiting would be appropriate. A staff person wrote a note saying she gave him notice of treatment on September 22, 2014 and he told her they were not to do anything to his unit as he had treated his cat for fleas. On May 22, 2014, it is noted that the landlord is treating 3 units for cockroaches and this tenant has the worst infestation. On March 12, 2014, the bad cockroach infestation in this unit is noted but it is the second time the tenant has not prepared for treatment. The bad infestation is also noted in a report on February 25, 2014; the Police had to attend so the landlord could gain entry and the tenant jumped over the balcony and ran off. It is also noted that he has wood on his balcony, it is a fire hazard, but he refuses to remove it as it is there 'for privacy'. Many breach letters were sent to the tenant advising of the terms of his lease and his obligations.

The tenant denied receiving the evidence from the landlord but when the landlord was retrieving the tracking number, he said he had just found a post office card mixed in his

newspapers. He said he has a disability and did not understand it. The tenant was articulate and defensive of the conditions of his unit and his choices to date. He said there were lots of flaws in the landlord's evidence but some truth. He said management are professionals and are negligent in how they treat for cockroaches, leaving long periods of time between treatments. He said when he objected to the fumigation due to health concerns, management asked him for a letter from his doctor but he said this was inappropriate. He said he allowed them in several times to treat but insists he has no bed bugs; he said a dog came with pest control but left after a few minutes because the attendant said the dog could not take the flea bites. He did not agree that the bed bug inspector who stayed saw any bed bugs in his unit, although the inspector reported there were bug droppings and casings there. He said when he denies access, he leaves a note with his objections but management doesn't respond and the chain on his door to prevent access was only related to the bed bug treatment. He says he gets no bites and if there are any, they must be hiding for he does not see them. He said he asked the flea control to check for bed bugs, there were items disturbed so he thinks they checked but he got no report. He reiterated many times that he has no bugs, only cockroaches and the management is not treating them appropriately or often enough.

The landlord said try to inspect for cockroaches and treat about once a fortnight but the tenant denies access and if he gives it, his unit is not prepared. They agree they have cockroaches in the building but said it is at a low level except in this unit which has fleas and bed bugs as well. Together with him denying a leak which caused significant damage to the building while denying access so they could inspect and repair it and the continuing pest problem which he also denies, the landlord's property is being put at significant risk and the health and safety of other tenants jeopardized.

Included with the evidence are many reports, the tenancy agreement, a USB from the tenant, breach letters and a copy of the Notice to End Tenancy.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that the tenant has seriously jeopardized the health and safety of other residents or the landlord; and the tenant has put the landlord's property at significant risk.

Much of the hearing was engaged by the tenant reiterating his arguments that he does not have flea and bed bug pests in the unit, and alleging the landlord is negligent in not treating the cockroach infestation properly. However, as announced to the tenant in the hearing, I find the preponderance of the evidence supports the landlord's reasons to end the tenancy for cause under section 47 of the Act. The tenant did not deny the leak problem or that he denied access for treatment and/or did not prepare his unit properly but much of his contentions were with the decisions of the pest control personnel and management. The tenant became angry and demonstrated some of the problems that management have in dealing with him. He said I should have known "he needed help" (although he did not mention this at the outset of the hearing) as he has a disability; as stated earlier, I found him articulate and well able to remember and dispute events in the hearing. He said he would pursue this further to appeal as he felt he did not have enough say, although the hearing lasted 60 minutes and he dominated most of the hearing time. I tried to advise him of his rights to a review and appeal.

After he made an appeal to the landlord, the landlord agreed to treat his unit again for cockroaches and give him some time by requesting an Order of Possession effective December 5, 2014.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on October 31, 2014 as set out on the Notice.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on October 31, 2014. Pursuant to the landlord's request and section 55 of the Act, an Order of Possession is issued to the landlord effective December 5, 2014.

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 19, 2014

Residential Tenancy Branch