



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AYSIDE PROPERTIES VICESo protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy (the 1 Month Notice) for Cause pursuant to section 47; and
- authorization for the tenant to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord called two witnesses who testified at the hearing, the building manager and the pest control company manager.

The landlord orally requested an Order of Possession pursuant to section 55 of the *Act* in the event that the tenant's application to cancel the 1 Month Notice were dismissed.

The landlord's witness and building manager provided sworn, uncontested testimony confirming the notice provided in documentary evidence that on September 22, 2014, he served the tenant with the 1 Month Notice by posting it on the door of the rental unit. The tenant confirmed receipt of that notice. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 1 Month Notice on September 25, 2014 (3 days after posting), pursuant to section 88 and 90 of the *Act*.

In response to service of the 1 Month Notice to End Tenancy served September 22, 2014, the tenant filed and duly served to the landlord (by delivering to the front desk attendant) a Notice for Application for Dispute Resolution on September 23, 2014. On the basis of the tenant's evidence, I am satisfied that the tenant was served with the Notice for Application for Dispute Resolution and hearing package on September 23, 2014 pursuant to section 88 of the *Act*.

The landlord submitted an evidence package, serving the tenant with this package on October 20, 2014 by way of registered mail. The landlord provided the Canada Post tracking number to demonstrate the service of this package to the tenant. On the basis of this evidence, I am satisfied that the tenant was deemed served with the evidence pursuant to section 88 and 90 of the *Act* October 25, 2014, 5 days after the registered mailing. The tenant acknowledged receipt of the landlord's materials in his testimony.

Issues to be Decided

Should the landlord's 1 Month Notice to End Tenancy be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began July 1, 2000 on a month to month basis with a rental amount of \$560.00 per month which has since increased to \$778.00 per month as of May 2013. In the 1 Month Notice, requiring the tenant to end this tenancy by October 31, 2014, the landlord cited the following reasons for the issuance of the Notice, subject to section 47(1)(d) of the *Act*:

the tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk.

The landlord also claims that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, pursuant to section 47(1)(h) of the *Act*.

The landlord indicated that the tenant has not met his obligation with respect to a bed bug infestation in his suite, and that his suite is the source of bed bugs at the residential property. The landlord provided documentary evidence, highlighted at the hearing, demonstrating ongoing pest control service in the building and, particularly, in the tenant's suite beginning December, 2013. The landlord's written evidence maintains that the tenant's suite was infested with bed bugs but that this infestation had not been reported to the management. As a witness for the landlord, the building manager also

attended the hearing. He stated, under sworn testimony, that he was not advised by this tenant about the presence of bed bugs.

From December 2013 to September 2014, there were a total of over 10 treatments and over 4 inspections by the pest control company. These were completed at the residential property, including the tenant's suite and other suites in this multilevel, multi-tenant rental building. The landlord provided service reports reflecting treatment and inspection of the tenant's suite. Copies of regular correspondence beginning in December 2013 from the landlord to the tenant indicate requests for; removal of furniture (dresser, curtains, hide-a-bed), covering of the mattress (mattress cover supplied by pest control company), and ongoing requests for proper preparation for inspections and treatment.

The landlords provided evidence that detailed information with respect to the steps the tenant should take with respect to bed bugs and upcoming treatments. The landlord and the landlord's witnesses, supported by the documentary evidence, stated the tenant did not encase his mattress and he did not dispose of belongings on request, including books and small items but also furniture. These requests were made repeatedly with offers of assistance by the landlord, according to the tenant notices provided as evidence by the landlord. It should also be noted that at least one scheduled treatment could not proceed because the tenant had not properly prepared his rental unit for that treatment.

The witness for the landlord, the manager of a pest control company retained by the landlord, testified that he had provided services at the tenant's unit and other units at the residential property. He stated that the tenant's rental unit had "extensive activity". The pest control manager testified, while the tenant had become more compliant with the treatment process, there had been a lack of compliance with requests in the past nine months. He testified that it is always difficult to assess where bed bugs originate. However, he stated that the level of infestation within the tenant's suite was unusually high and could not be addressed sufficiently due to the tenant's lack of preparation for treatment and disposal of materials that might be compromised.

The tenant's undisputed testimony was that he is both legally blind and suffered from severe diabetes. Based on these physical ailments, the tenant testified that he was not able to see or feel bed bugs in his suite. He testified that he was compliant with all requests related to pest control service at his rental unit. The tenant also stated in his testimony that when he did become aware of an issue in his suite, he alerted the building manager. He testified that he had difficulty complying with requests because of his physical limits and limited means.

Analysis

The landlord refers to the residential tenancy agreement in her submissions with respect to the obligation of the tenant to maintain ordinary health, cleanliness and sanitary standards throughout the residential premises and residential property. The landlord provided evidence that the tenant failed to maintain ordinary standards of health, cleanliness or sanitation by failing to dispose of materials as requested and by failing to prepare his rental unit for treatments to eradicate the bed bugs in his suite.

In this same section of the tenancy agreement, the responsibility of the landlord is also noted. The landlord is to comply with health, safety and housing standards required by law. I find that the landlord has taken all steps necessary and available in attempting to eradicate bed bugs from the residential property since becoming aware of the infestation. The landlord provided evidence of ongoing investigation and treatments to a variety of units with a focus and extensive attention to the rental unit of this tenant.

I find that there is evidence, in the landlord's written evidence and in oral testimony by the landlord and the landlord's witnesses that the tenant was unreasonable or uncooperative in the service of his suite and in the requests made of him by the landlord. The landlord's documentary evidence and witnesses confirmed that other suites were also infested with bed bugs. However, all other suites on the residential property were able to be successfully treated. The bed bugs were eradicated in those suites.

Detection of bedbugs can be difficult, particularly if one has poor eyesight. The tenant's situation is further compromised by his diabetes. However, when it became known to the tenant that his unit was infested with bed bugs, I find that the tenant did not meet his obligations to assist in ensuring the eradication of the bed bugs from his rental unit. Bedbugs are insidious and, as the pest control manager testified, it is difficult to determine their source. I find, however, that it has been proven by the landlord, on a balance of probabilities, that the tenant is responsible for the inability of the landlord to address the bed bug infestation, despite their long term effort to do so, by failing to comply with treatment such that the bed bugs in his rental unit can be fully eradicated. I do not find that the tenant breached a material term of his tenancy agreement. However, I find that the landlord has met their burden in showing the tenant's lack of due attention and his lack of action have impacted the residential property, the landlord and the tenancy in a substantive way, leading to the interference, disturbance and risk to property of the landlord and the other occupants within the residential property.

Therefore, I dismiss the tenant's application to cancel the Notice to End Tenancy. Further, I will order an Order of Possession to the landlord, pursuant to their oral request and section 55 of the *Act*. As the applicant's claim has been dismissed, he is not entitled to recover his filing fee for this application.

Conclusion

I dismiss the tenant's application without leave to reapply.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. I grant an Order of Possession to the landlord effective December 31, 2014. The landlord is provided with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 24, 2014

Residential Tenancy Branch

