



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on September 27, 2012. Rent of \$904.35 is payable monthly on the first day of each month. On May 22, 2015 the Landlord gave the Tenants a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door. The reason indicated on the Notice is that 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 states that the Tenants are responsible for the introduction of bedbugs into the unit and have failed to sufficiently carry out preparations required for ridding the bugs.

The Landlord states that the Tenants failure to act threatens the rest of the building and units with infestation. The Landlord provides copies of technician reports of treatment that could not be done on May 8, 2015 and May 21, 2015 due to the insufficient preparation, primarily inability for the technical to reach all baseboards and other areas. The Landlord did not provide a copy of the preparation instructions that the Landlord states was given to the Tenants along with in person instructions by the technician. The Landlord states that the Tenants informed the Landlord that they did not have sufficient space in their unit to move items as requested and that the Landlord was not able to offer the Tenant any extra space. The Landlord states that although there was an empty unit the Landlord could not risk the infestation spreading to that unit as well. The Landlord states that since the issuance of the Notice two treatments were able to be carried out in the unit. The Landlord states that the company guarantees eradication within two treatments if the procedures are followed completely. The Landlord states that the unit next to the Tenants is now infested and has been successfully treated. The Landlord states that the number of bugs in the Tenants unit was vast in comparison to the bugs in the next unit.

The Landlord states that four years ago almost ever unit in the building was infested and that they were all treated with no reoccurrence for the past 1.5 years. The Landlord states that no other units have reported bedbugs in the past 1.5 years.

The Tenant states that on April 24, 2015 prior to the appearance of the bugs water flooded from a ceiling hole in their bathroom. The hole and flood was caused by a burst pipe in the upper unit. The Tenant states that following this flood the bed was covered with bedbugs and that they were crawling up the walls. The Tenant states that a further cave-in occurred on April 26, 2015. The Tenant states that the persons who attended to

the repairs wore disposable outer suits and used bedbug spray. The Tenant states that as well the unit next to them was treated for bugs in October 2014. The Tenant provided a copy of a letter from the tenant of this unit in relation to the treatment of the bugs. The Tenant states that this confirms that the bedbugs have never really left. The Tenants state further that because of the long repair period to the bathroom, the space the Tenants had for use was even more limited and that it was impossible to meet the preparation list 100%. The Tenant states that after the Tenants got the city involved the Landlord told the Tenant they could use the empty unit but then within days refused to allow this to the Tenants.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. I am not satisfied that the Landlord's evidence of complete eradication of a significant and prior bedbug infestation of the building is credible given the letter from the Tenant's neighbour. This evidence of a long term, pre-existing and recent problem tends to support the credibility of the Tenant's evidence of bugs appearing into the unit with the flood and from within the structure of the building. I find therefore on a balance of probabilities that the Landlord has not shown that the Tenant's introduced bedbugs into their unit.

Although there is evidence of insufficiency of preparation by the Tenants, I accept the Tenants' undisputed and credible evidence of the flood experience to have caused a loss of space to move their belongings in preparation for treatment. The Tenants appear to have been in a no win situation and the Landlord did nothing to reduce this shortage of space or enable the unit to be better prepared. As such, even if the Tenants were not able to adequately prepare the unit, I find that the Landlord failed to mitigate the spread of the bugs themselves by failing to ensure the unit at least could be prepared for the treatment. I also question how the Tenant could be held solely responsible for the preparation of a repair site when the Tenant did not cause the

damage to the site in the first place. I am not satisfied therefore that the Tenants significantly interfered with or disturbed the Landlord with their limited ability to carry out preparation nor am I satisfied that the Tenants' behavior caused a significant jeopardy or risk to the Landlord's property or other tenant. I find therefore that the Notice is not valid and that the Tenants are entitled to a cancellation of the Notice. The tenancy continues.

Conclusion

The Notice 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: July 17, 2015

Residential Tenancy Branch

