



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, F; CNC, CNL

Introduction

This hearing was in relation to the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

This hearing was in relation to the tenant's application pursuant to the Act for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

This hearing was originally set to be heard 16 June 2015. As a result of time constraints, that hearing was continued over. This decision should be read in conjunction with the interim decision dated 17 June 2015.

The tenant appeared with his advocate.

The landlord was represented by its counsel. The landlord's agent SM appeared. The landlord's agent NH appeared. NH is an employee of the landlord and property manager for the residential property in which the rental unit is located. MG attended as a witness for the landlord.

Each party admitted service of all documents before me.

Prior Dispute Resolution Hearings

This tenancy was the subject of five prior hearings. The file numbers associated with those five hearings are noted on the covering page to this decision.

RTB #1 was heard 16 October 2013. The decision in RTB #1 was in relation to the tenant's application to cancel a one month notice to end tenancy dated 27 August 2013. Arbitrator DB found that the landlord had provided insufficient evidence to substantiate the notice. Arbitrator DB cancelled the one month notice.

RTB #2 was heard 23 March 2014. The decision in RTB #2 was in relation to the tenant's application to cancel a one month notice to end tenancy. The parties entered into a settlement agreement. That settlement agreement was recorded by arbitrator DV as a decision of this Branch. The settlement contained the following terms:

- 1. The landlord agrees that a suitable, alternative rental unit, or suite as called by the parties, in the same residential building, above the first floor, will be made available to the tenant when the same becomes vacant;*
- 2. The tenant agrees to vacate the rental unit and move into the suitable, alternative rental unit when offered by the landlord so that the landlord will have vacant possession of the rental unit;*
- 3. The landlord agrees that there will be no additional rent increase for the tenant's next rental unit as described above;*
- 4. The parties agree that the tenancy will continue until the landlord offers and the tenant accepts the suitable, alternative rental unit; and*
- 5. The parties acknowledge their understanding that this settled Decision resolves the matters contained in the tenant's application and that no finding is made on the merits of the said application for dispute resolution or the landlord's Notice.*

RTB #3 was heard 30 May 2014. The decision in RTB #3 was in relation to the tenant's application to cancel a two month notice to end tenancy dated 31 March 2014. The landlord's agent attended at the hearing and agreed to cancel the two month notice to end tenancy as the landlord did not have the necessary permits.

RTB #4 was heard 16 June 2014. The decision in RTB #4 was in relation to the tenant's application to cancel a two month notice to end tenancy dated 27 May 2014. In canceling the 2 Month Notice, arbitrator JH found in part as follows:

After considering the evidence before me I find that the 2 month Notice to end tenancy for landlord's use issued on May 27, 2014 is of no force and effect.

I considered the decision issued on March 26, 2014; which resulted in agreement to offer the tenant an alternate unit. On May 30, 2014 the decision issued reminded the landlord of the requirement to comply with that mutually settled agreement.

...

As I explained during the hearing held today; I was not prepared, or able, to alter the mutually settled agreement. The matter related to the unit where the tenant will reside in the future has been previously decided, but the landlord has failed to meet the terms of the agreement made. If the landlord wishes to complete renovations, the landlord's compliance with the mutually settled agreement will negate any need to evict the tenant based on a 2 month Notice ending tenancy for the purpose of repair of the unit.

RTB #5 was heard 18 August 2014. The decision in RTB #5 was in relation to cross claims. Arbitrator RM had before him a one month notice to end tenancy dated 11 June 2014. RM found in part as follows:

On one hand the evidence indicates the landlord is not acting in good faith and has not lived up to the settlement agreement set out in the decision of the arbitrator on March 26, 2014. ... I do not accept the submission of the landlord that they have lived up to the agreement. The rental units offered to the tenant occurred in January and February of 2014. The landlord has not offered the tenant with any rental unit let alone a "suitable alternative rental unit" since the date of the agreement. ... The agreement further provides that the tenancy will continue until the landlord offers and the tenant accepts the suitable alternative rental unit.

On the other hand the photographs show there is a significant amount of debris. The landlord has testified his inspections show the rental unit lacks reasonable health, cleanliness and sanitary standards. The photographs are of poor quality but they indicate a problem with clutter. In essence the tenant appears to be taking the position that there is no obligation on the tenant to take proper care of the rental unit given the settlement of March 26, 2014.

I do not accept the that the tenant is free to live in the rental without obligations.

...

After carefully considering all of the disputed evidence I determined the landlord has failed to prove the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk. Further the landlord failed to prove the condition of

the rental unit is significantly different than what it was on the date of the settlement on March 26, 2014 for the following reasons:

- *The quality of the photographs relied on by the landlord is of poor quality. The photographs show significant clutter. However, this existed at the time of the March 26, 2014 hearing and clutter in itself is not grounds to end the tenancy. Further it is insufficient to prove the tenant seriously jeopardized the health or safety of the landlord or put the landlord's property at significant risk.*
- *The note from pest control technician shows problem with cockroaches, mice feces and cleanliness. It indicates that the unit needs to be treated and the tenant must take steps to facilitate this. The pest control technician did not testify at the hearing and I am unable to conclude that the lack of cleanliness and pest problems has reached a stage required to end the tenancy.*
- *The landlord failed to prove the loose tiles in the bathroom was anything more than reasonable wear and tear;*
- *While there are problems with cleanliness, the landlord failed to provide evidence from a health and safety expert in the area who has inspected the rental unit.*
- *The landlord testified they have received complaints from other residents but failed to provide evidence from those complaining.*

In my view the landlord has failed to establish sufficient cause to end the tenancy and is bound by the settlement entered into on March 26, 2014. The decision contemplates the tenant being given a suitable alternative rental unit and that this tenancy would continue until the landlord offers and the tenant accepts the suitable alternative rental unit. It is not appropriate for the landlord to avoid its responsibilities under this agreement and seek to end the tenancy without first at least attempting to fulfill its obligations under the agreement.

This decision should not be considered by the Tenant as a free pass permitting the tenant to continue to live in the rental unit without fulfilling his obligation to maintain reasonable health and cleanliness. At some stage, unless something is done by the tenant, the continued deterioration of the rental unit will reach a stage that it is so significant as to amount to the breach of a material term in the tenancy agreement giving the landlord the right to end the tenancy. The tenant has refused assistance in cleaning. I would strongly encourage him to accept their offer of assistance.

Issue(s) to be Decided

Should the landlord's 1 Month Notice and 2 Month Notice 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

While I have turned my mind to all the documentary evidence, and the testimony, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 1 November 2001.

On 23 April 2015 the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out an effective date of 31 May 2015. The 1 Month Notice set out that it was given as the tenant or 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; or

On 23 April 2015 the landlord served the tenant with the 2 Month Notice. The 2 Month Notice set out an effective date of 30 June 2015. The notice set out that it was given as the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

Landlord's Submissions

The landlord submits that it is now appropriate to uphold the 1 Month Notice as:

1. The condition of the rental unit has deteriorated since RTB #5 and it has even deteriorated in the five weeks between recent visits.
2. There have been more tenant complaints, which have been provided in writing.
3. Other occupants are threatening to leave or seek rent concessions.
4. The tenant has now caused water damage to the rental unit and residential property.
5. The tenant's cleanliness issue has caused pest infestations in surrounding rental units.

6. Arbitrator RM set out in RTB #5 that the tenant was close to the line.
7. There is no “suitable” alternative unit for the tenant because of his issues with cleanliness.

The landlord consented to a longer notice period if an order of possession was granted. The landlord stipulated an effective date of no later than 31 August 2015 on the condition that the tenant comply with the pest control protocol.

Tenant's Submissions

The tenant submits that the landlord is not abiding by the agreement entered into in RTB #2. The tenant submits that I am prevented by the doctrine of *res judicata* from finding the notices are valid.

The tenant submits that the conditions in the rental unit are similar to those that existed at the time of RTB #5. The tenant submits that if the conditions are worse, it is because the landlord has not effectively treated the rental unit by failing to make any treatments since RTB #5. The tenant submits that there is no difference between the condition in the photographs and the video recording.

Testimony of NH

NH is the property manager of the residential property including the rental unit. NH testified that he has been in the rental unit six times. NH testified that three of those times he was accompanied by SM. SM recorded the visit of 28 May 2015.

NH testified that he first saw the condition of the rental unit on 26 November 2013 with an inspector. At that time there was water damage, mildew, mould, and water in carpets and walls. NH testified that he made note of the condition and contacted the tenant's social worker TH. NH met with TH on 23 December 2013. TH attended at the suite. TH arranged for cleaners to assist the tenant. The tenant rejected the cleaning assistance.

NH testified that there are no suitable available rental units in the residential property for the tenant. NH testified that the last suitable suites were available in early 2014 and were both rejected by the tenant. NH testified that there are two other rental units that are not renovated. NH testified that it was his belief that only an unrenovated unit would be appropriate for the tenant because of the current issues with his unit. NH testified that the landlord has all the necessary permits in place to renovate the rental unit.

NH testified that, on recommendation of an inspector, he referred the tenant's case to the hoarding taskforce. The fire department has visited, but there has yet to been a visit from someone in health. The fire department could not intervene as the clutter does not interfere with entry and exit from the rental unit.

NH testified that he was last in the suite two weeks before the first portion of this hearing. NH was accompanied by pest control. NH testified that compared to August 2014, the condition of the rental unit had declined and the population of insects had increased. NH testified that he observed collections of food stuff in the kitchen area. NH testified that he observed more mildew in the bathroom. NH testified that he observed that the hallway was dirty and far worse than August 2014. NH testified that he observed that the living room was more unkempt. NH testified that he observed that there were spider webs everywhere and the spiders were eating the cockroaches. NH testified that the population of insects has worsened exponentially.

NH testified that the discussion recorded in MG's letter dated 28 April 2015 is accurate. NH testified that it necessary to perform work on the rental unit to remediate the cockroach infestation.

NH testified that the tenant has made no efforts to clean things up. In particular, NH noted that he observed no attempt to remove the grease from the walls or appliances and no adequate attempt to mitigate the spread of the cockroaches. NH testified that the last attempt to treat the rental unit was May 2015.

NH testified that the tenant does not appear to be concerned with the other occupants of the residential property. In the last ten months, NH documented complaints:

- **SB/HP:** Documented six conversations with SB/HP. SB/HP made an official complaint and provided the landlord with sixty days to rectify the issue. SB/HP's unit has been treated. NH testified that the rental unit shares a wall with SB/HP's unit. The kitchens for these units share this wall. NH testified that pests from the rental unit are entering into SB/HP's unit. SB/HP's unit will be treated but the problem will recur.
- **TD:** Provided an unsolicited complaint. NH has had several conversations with TD in which he expressed his concerns verbally. NH testified that TD's unit has been treated twice.
- **CK:** CK's unit has an infestation issue. CK's unit has been treated, but infestation continues to be a problem.

- **T:** T lives in the unit under the rental unit. The water from the tenant's bathtub area is entering T's unit. In particular, T's unit has water infiltration into the valance in the bathroom.

NH testified that the water is entering into the walls in the tenant's bathtub area when he does laundry. NH testified that the floor also has water infiltration and is rotting. NH testified that the floor is separating from the bathtub. NH testified that the bathroom damage was raised in an earlier dispute resolution hearing, but that it has worsened since the last hearing.

NH testified that there is a large hole in the shower area at the back of the tub. NH testified that he asked the tenant if he could enter to complete repairs. The tenant refused the repairs. NH testified that the type of repair necessary is a major repair. NH testified that the tenant will not allow for repair or renovation to occur effectively. NH testified that he has completed minor repairs in the rental unit to the taps and sinks. NH testified that in January 2014 he attempted to repair the bathtub area.

NH testified that water from the rental unit is entering into two first-floor units below the tenant's. NH testified that he believes that the water damage to T's unit, the unit next to T's and the parking area is caused by water from the rental unit as the areas are immediately below the rental unit's bath area. NH testified that the water from the rental unit is also causing damage to the parking area. NH testified that there are no other leaks or flooding problems in the parking garage. NH testified that the water flow was not caused by heavy rain. NH testified that the plumbing in the parking garage is exposed and no leaks are visible in the exposed piping.

NH testified he was there on 22 April 2015 when the photographs numbered 7 through 35 were taken. NH provided the following descriptions of the photographs:

- **Photograph 7:** There are food stains behind stove. The black dots are cockroaches. The stove has leveling feet which are Teflon coated.
- **Photograph 8:** Shows food on floor and cockroaches on the walls. There are food and cockroaches on the floor.
- **Photograph 9:** The black dots are cockroaches.
- **Photograph 10:** This cupboard above the stove contains food debris and cockroaches.
- **Photograph 11:** Shows cockroaches and grease coating on hood fan.
- **Photograph 12:** Shows food particles and cockroaches. The elements contain cockroaches.
- **Photograph 14:** The ceiling has cockroaches and spiders on it.

- **Photograph 15:** The tenant washes his laundry in the bathtub. This is the cause of the water infiltration to T's unit and the parking area. There is a black coating of grease in the bathtub. The black in the photograph is mildew and mould.
- **Photograph 16:** Shows spiders and cockroaches as well as some traces of mildew and mould.
- **Photograph 17:** This wall is the south wall of the bathtub area. This is the area of water infiltration. The wall is constructed of plaster over a cedar lath—it is not tiled. The lath has been infested with mould. There is mildew in the wall.
- **Photograph 18:** The black dots are cockroaches in the door jamb. There are spider webs in the photograph as well.
- **Photograph 19:** This shows mildew on the ceiling.
- **Photograph 20:** Shows grease in an intercom.
- **Photograph 21:** Shows mildew and cockroaches.
- **Photograph 22:** The interior of a lower cabinet. There is food in the cupboard. The black dots are cockroaches and spiders.
- **Photographs 24 and 25:** Mildew.
- **Photograph 26:** Shows cockroaches.
- **Photograph 27:** Shows mildew and mould. The foggy material is accumulated spider webbing. The spiders are devouring the cockroaches.
- **Photograph 28:** Shows the area above the fridge.
- **Photographs 29 and 30:** This is the carpeted area of the bedroom. Shows a cockroach trap with many insects. The trap consists of sticky paper upon which the bugs become trapped. The carpet shows grease and mildew.
- **Photograph 31:** The tenant dries his laundry on the heat registered. The carpeting around this area becomes mouldy. The photograph shows mildew on the carpet. The tenant puts baking soda on the floor to mitigate the mould.
- **Photograph 32:** Shows heavy density spider webs on the door handle.
- **Photograph 33:** Shows cigarettes, beer cans, and food stuff. There are active cockroaches on the table. There is a burn on the carpet that goes completely through the carpet. NH alleges that this damage was hidden in a past inspection as it was covered in debris.
- **Photograph 34:** Shows cockroaches and grease on the wall.
- **Photograph 35:** This is the area behind the fridge. There is food and cockroach activity. The fridge has on wheels on the back edge and skids on the front edge. It is not difficult to move the fridge.

NH testified he was there in May 2015 when the photographs numbered 10 through 23 were taken in the unit that shares a wall with T and is also below the rental unit bathtub. NH provided the following descriptions of the photographs:

- **Photographs 11 and 12:** Water flowing into the parking area.
- **Photograph 13 – 15:** These photographs show water marks and mould on piping. NH testified that the parking garage was recently painted.
- **Photographs 18, 19, 21, and 22:** Show the bathroom in one of the first-floor units. The paint has trapped the water and has caused the formation of a bubble.

NH testified as to the contents of the video. NH testified that, between the photographs in April and the video at the end of May, the condition of the rental unit had deteriorated. In particular, NH testified that the number of cockroaches had increased.

Testimony of SM

SM provides commercial eviction services. SM testified that he has worked in this industry for over three decades. SM has been contracted by the landlord to assist in evicting the tenant. In particular, SM provides assistance with conducting inspections, filing notices and making applications.

SM testified that he has attended at the rental unit approximately four or five times since 1 May 2014. SM documented visits in April 2014, 11 June 2014, early August, and 28 May 2015. SM testified that on each visit the condition of the rental unit would deteriorate.

SM testified that he indicated the infestation was a 9/10 in his testimony for RTB #5. SM testified that he gave evidence at the hearing for RTB #5 that the tenancy should end based on the condition of the rental unit at that time. SM testified that it is “unbelievable” how much the rental unit has deteriorated. SM testified that there is the same amount of debris in the unit, but that the level of the infestation is up. SM testified that in his time in the residential tenancy industry he has only seen two units with worse infestations. SM testified that the insect population in the hallway has multiplied exponentially.

SM testified that the mould in the rental unit has worsened. SM estimated that it is four or five times worse than his August 2014 visit. SM testified that the flooring has rotted at the edge of the bathtub and beside the toilet. SM testified that the water damage occurring to the areas below the rental unit cannot be remediated until the source of the water is stopped.

SM testified that the specks visible in the video are insects, not dirt. SM testified that when he was recording on 28 May 2015, he disturbed some plastic shopping bags. SM testified that cockroaches came streaming out when the bags were disrupted. SM testified that the long shadows that extend from the ceiling to shoulder height are spider webs. SM testified that the camera had difficulty focusing on the spider webs and what was visible was approximately 40 to 50% of the spider webs in the rental unit. SM agreed on cross examination that there was no food stuff lying around and that the food visible in the video is in sealed food containers.

Testimony of MG

MG works in pest removal. He has been in the pest removal industry for approximately 2.5 years. MG testified that he was hired by the landlord. MG testified that he attended at the rental unit on 13 April, 22 April and 3 June 2015.

MG testified that, on the basis of records provided to him by his employer, the last time his company treated the rental unit was in October 2011. MG testified that he was not in attendance for the treatments in February 2015. MG testified that he treated SB/HP's unit on 13 April 2015.

MG testified that on 13 April 2015, he attended at the rental unit and laid down bait. MG testified that on his 13 April 2015 visit, he provided the tenant with verbal instructions on how to prepare the rental unit for treatment on 22 April 2015. MG testified that no preparation occurred. MG testified that on the 3 June 2015 visit the level of activity had increased. MG noted that no preparatory work to facilitate treatment had been accomplished by this date.

MG testified that the level of spider and cockroach activity is extremely high. The spiders are feeding on the cockroaches, which is common in high infestations. MG testifies that extreme activity is very difficult to treat.

MG testified that treatment for cockroaches is with bait and chemical treatment. MG testified that he has treated other units in the residential property. MG testified that he has identified the source unit as the rental unit. MG testified that for an extreme infestation, extreme treatment is required. MG testified that this is a special case. MG testified that it is very difficult to treat the adjoining units without addressing the source unit. MG testified that the unit can be treated while occupied, although it is more difficult, but that it requires compliance with the treatment regimen. MG testified that if the tenant does not comply with the treatment regimen the infestation issue in the rental unit and adjoining units cannot be remedied. MG testified that to get rid of the cockroaches the cooperation of the nine infested units is required. MG testified that if food sources are available to the cockroaches it diminishes the effectiveness of a baiting program.

MG also provided a letter dated 28 April 2015. MG testified that the letter is accurate. That letter sets out the following details:

...I advised both [NH] and the tenant that with the pest control solutions that [the pest control company] has at its disposal there would be limited success if the tenant was unwilling to prepare his unit for treatment. A preparation sheet has been issued to this tenant on multiple occasions and he has continuously disregarded the document. At the end of our conversation with the tenant we came to a verbal agreement that in one week's time his unit would be prepared...to a level that would allow for a successful treatment...

Upon returning on April 22nd 2015 it was found that the tenant had not held up his end of our verbal agreement to have his unit prepared. ...

The tenant's disregard for basic sanitation has lead to an extremely high level of infestation of both cockroaches and spiders in his unit which are now leading to issues in the surrounding units of the building. Without proper preparation in the unit pre-treatment and an ongoing monitoring of the sanitation levels within his unit post treatment, it is my professional opinion that treatment success will be extremely limited and cost prohibitive for [the landlord].

Tenant's Testimony

The tenant testified that the landlord did not treat the rental unit between August 2014 and April 2015. The tenant testified that the landlord gave notices to treat the unit for 13 April 2015 and before August 2014.

The tenant testified that in order to treat the cockroach infestation he purchases traps. The tenant testified that he replaces the traps when they are full and brings in new ones.

The tenant testified that in April 2015 he was specifically told to prepare his kitchen and bathroom for treatment. The tenant testified that he was told to clean the cupboards of the kitchen and bathroom with bleach. The tenant testified that it was not necessary to use bleach and that other cleaners could be used. On cross examination, the tenant testified that he could not explain why grease was still in the kitchen.

The tenant testified that he refused assistance with cleaning because he has two hands and two legs and can do the work himself. The tenant admits that he has not done a good job of cleaning. The tenant testified that the bugs are getting worse because there has been no treatment.

The tenant testified that he does his laundry in his bathtub because there are problems with the washer and dryer. In particular, the tenant testified that the dryer will not accept coins. As well the tenant testified that one time the machine was dirty. The tenant testified that he has seen bed bugs around the washer and dryer. The tenant testified that he has to go up the stairs to use the washer and dryer. The tenant admits that there are twelve washers and dryers in the residential property. The tenant testified that the landlord never told him to stop using the bathtub to do his laundry. The tenant testified that if the landlord told him to stop he would do so.

The tenant testified that there is not so much of a difference between the condition of the rental unit between August 2014 and now. The tenant testified that there are more insects but that is it. The tenant testified that there are more insects because the landlord did not treat the rental unit when it should have.

The tenant was not directly aware of any issues with his neighbours.

Documentary Evidence

The landlord provided video evidence. That video was recorded 28 May 2015. The video shows that the apartment is cluttered. There are visible spider webs in all rooms. There is heavy cockroach activity contained within the clutter in the dining area. Many cockroaches are seen scurrying out of the debris when it is disturbed.

I was provided with a letter dated 2 June 2015 authored by TD. TD lives on the same floor as the tenant. TD sets out in part:

...I've actually witnessed cockroaches crawling out from under his door and into the hallway. I have had to deal with his overflow of pests for years, and have grown tired of it.

I was provided with a letter dated 30 April 2015 authored by SP/HB. SP/HB's kitchen shares a wall with the tenant's kitchen. This letter documents SP/HB's problem with cockroaches in their unit. They document four visits from pest control. SP/HB indicate that they are going to have to vacate the unit if the problem is not remedied.

I was provided with an email dated 15 February 2015 from CK. CK sets out in part: I am writing in regards to two complaints I would like to formally make. The first is the ongoing cockroach problem in my apartment. Despite having pest control come one time and spray, then another time to put poisoned bait around, this problem has made a resurgence. ...over the past two weeks I have killed at least one dozen cockroaches.

...I know for sure they are coming through the air vent over the oven and would like to know what is being done to contain the problem in the apartment below mine.

Analysis

Two Month Notice

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue that has been previously settled by a judicial decision. There are three elements to this doctrine:

- an earlier binding decision has been made on the issue,
- a final judgment on the merits has been made, and
- the involvement of the same parties.

After considering the prior decisions, I consider myself bound by the decision of arbitrator JH in RTB#4. In this case the landlord has issued a two month notice for

substantially the same reasons as it issued the two month notice in RTB #4. The decision in RTB #4 was final and binding on the parties. The parties were the same in RTB #4 as this application. I do not agree that landlord's characterisation of "suitable" alternate units means that they are prevented from abiding by the terms of the agreement struck in RTB#2 for the purposes of the 2 Month Notice.

The tenant's application to cancel the 2 Month Notice is allowed. The 2 Month Notice is cancelled.

One Month Notice

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

On 23 April 2015, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant or 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; or
 - put the landlord's property at significant risk.

Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I find that RTB#2 does not prevent me from addressing the 1 Month Notice. That agreement cannot be reasonably understood to allow the tenant to act in such a way that would seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant as to do so would represent an unlawful attempt to contract out of the Act pursuant to section 5 of the Act. I accept that the agreement in RTB#2 amounted to waiver of enforcement on that notice and acceptance of the condition of the rental unit at the time of that notice.

In this case, the landlord alleges that the condition of the tenant's rental unit is preventing the landlord from effectively treating the cockroach infestation in the rental unit. In particular, MG provided testimony that the level of infestation is extreme and that it would be impossible to treat the rental unit in its current condition. MG testified

that he attended at the rental unit to advise the tenant of necessary preparation. When MG attended at the rental unit to treat it, the tenant had not completed the necessary preparatory work. As a result, MG was unable to treat the rental unit.

The tenant testified that he was instructed to prepare his bathroom and kitchen. It is apparent from the photographs and the video that the tenant has not cleaned his kitchen as directed. The tenant testified that it was not necessary to use bleach to clean the rental unit as another cleaner would do. I would accept this, if the tenant had cleaned the walls and cupboards with another cleaner. In RTB#5, RM encouraged the tenant to accept assistance with cleaning the rental unit. The tenant has refused assistance with cleaning that has been offered in the past. The tenant says that he is capable of cleaning the unit by himself. The tenant admits that he has not done a good job of cleaning. The tenant's attempts at remediation (sealing food in containers and laying sticky traps) are insufficient at solving this very serious infestation.

The photographs show that the rental unit is filled with insects and webs. The photographs show that there is food debris in the kitchen area, in particular on the walls and on the cupboards. The video shows that the debris in the living room is providing shelter to cockroaches. On the basis of this evidence, I find that the rental unit has an extreme cockroach infestation and that the continued condition of the rental unit is preventing effective treatment.

As a result of the inability to treat, the landlord alleges that it is prevented from preventing infestations that are affecting other units within the residential property. The landlord has provided written complaints from four other occupants of the residential property regarding the tenant's effects on their tenancies. In particular, the other occupants note the effect of cockroaches from the tenant's unit. Other occupants are threatening to end their tenancies.

The tenant was put on notice in RTB#5 that he was close to the line and that the condition of his rental unit was problematic. The landlord alleges that since that decision the condition of the rental unit has declined. In particular, NH, MG, and SM testified that the condition has declined. The tenant denies any decline and says that the condition is substantially the same. The tenant's apparently lack of insight into the condition of the unit as evidenced by his resistance to accepting help with cleaning, leads me to conclude that the tenant does not grasp the severity of the condition. I am not persuaded that he has an accurate perception of the condition of his unit. On balance, and notwithstanding that each is an employee or contractor of the landlord, I prefer the testimony of NH, MG and SM as to the condition of the rental unit.

Accordingly, I find that the condition of the rental unit has deteriorated since August 2014 and continued to deteriorate to the date of the hearing.

In RTB#5, RM noted that the landlord had provided poor quality photographs, the landlord did not provide testimony of a pest control technician, and did not provide documentary evidence of complaints from tenants. In this application, the landlord has addressed these deficiencies.

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. It does not seem like the tenant is capable of abiding by the standards required by the Act with respect to maintaining the rental unit. The tenant appears to require support to keep his rental unit in accordance with the Act and yet he refuses to accept the help that has been offered to him.

The effect of the tenant's lack of cleanliness and frustration of the landlord's efforts to treat has resulted in an inability of the landlord to maintain other units in the residential property. This has resulted in repeat infestations, which materially affects the rights of other occupants to the quiet enjoy of their tenancies. Further, the tenant's breach is causing other occupants to threaten to end their tenancies, which interferes with the landlord's right to engage in its business as a landlord. The duration of this interference adds to the seriousness of the situation. I find that the tenant's breach is seriously jeopardizing the lawful rights of both other occupants and the landlord. As such, the 1 Month Notice is substantiated pursuant to subparagraph 47(1)(d)(ii) of the Act.

As I have validated the notice on the basis of subparagraph 47(1)(d)(ii), I need not consider the other reasons for ending the tenancy set out in the 1 Month Notice.

The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply. The landlord's application for an order of possession on the basis of the 1 Month Notice is allowed. As the landlord has agreed to an end to the tenancy effective 31 August 2015, I grant the landlord an order of possession for this date. The tenant is cautioned that he is obliged to act in accordance with the Act, regulations and tenancy agreement, which includes cooperating with the extermination efforts.

Filing Fee

Subsection 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another. Generally this repayment is ordered where a party has been successful in its application. In this case, because of the landlord's failure to abide by the terms of the settlement set out in RTB#2, I am refusing to award this recovery. The landlord's application to recover its filing fee is dismissed without leave to reapply.

Conclusion

The tenant's application to cancel the 2 Month Notice is allowed.

The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply.

The landlord is provided with a formal copy of an order of possession effective at one o'clock in the afternoon on 31 August 2015. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is not permitted to recover its filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 31, 2015

Residential Tenancy Branch

