



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Concert Realty Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

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

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 in July 2005. Rent of \$1,030.00 is payable monthly on the first day of each month. On May 14, 2015 the Landlord served the Tenant with a one month notice to end tenancy for cause (the Notice) by posting the Notice on the door. The Notice contains the following reason:

The Tenant or person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant of 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 Tenant caused a bedbug infestation in her unit and surrounding units. The Landlord states that the Tenant also negligently contributed to the presence of bedbugs in the unit by failing to adequately prepare the unit for treatment.

The Landlord states that the Tenant reported the presence of bugs in June 2014 and that prior to this report no other units in the building had bedbugs. The Landlord states that units in a building across had previously been treated for bedbugs and that there was some cross-over of tenants between the two buildings during this time. Upon inspecting the adjoining and cross units in the building containing the Tenant's unit, two additional units were found infested however not to the extent as the Tenant's unit. The Landlord believes the Tenant is bringing in the bedbugs on her person from somewhere outside the building but has no evidence to support this belief. The Landlord states that the unit was treated with chemicals. The Landlord states that the Tenant prepared the unit to an acceptable standard for this treatment.

The Landlord states that the unit was treated again with a heat treatment on July 3, 2014 and with chemical treatments on August 19 and 29, 2015. The Landlord states that for the heat treatment the Tenant failed to move her furniture away from the wall and failed to remove some electrical items so the technician moved these items before the treatment. The Landlord states that the Tenant was helped by the Landlord to prepare for the chemical treatments.

The Landlord states that no bugs were reported in the building after the last treatment until May 2015 when the unit across from the Tenant's unit reported bedbugs. The Landlord states that all the other units were inspected but that only the Tenant's unit was infested along with the reporting unit. The Landlord states that the Tenant must have introduced the bugs as the count in the Tenant's unit was much bigger than the count in the reporting unit. The Landlord states at this point the Tenant was given the Notice.

The Landlord states that there has been no structural investigation of the building for the bugs. The Landlord states that the pest companies do not guarantee eradication but do say there is a 90% success rate and that if bugs are in the walls these would be treated. The Landlord states that heat treatment however will not extend through concrete and that one wall of the unit has such concrete. The Landlord agrees that bugs can be in between walls and undetected for years but that the problem is the Tenant's slow reporting of the bugs. The Landlord states that

perhaps the Tenant does not see the bugs but the late reporting gives the bug time to spread to other units therefore requiring a greater number of treatments, upheaval to other tenants and increased costs to the Landlord.

The Tenant states that she never saw any bugs or that when she did it was only one or two and not the number stated by the Landlord. The Tenant states that the Landlord provided no supporting evidence of the number of bugs found in the units. The Tenant states that she was not provided with any written preparation instructions for the first treatment and that for the second treatment she was physically unable to move her furniture. The Tenant states that she otherwise prepared the unit beyond the instructions. The Tenant states that she called the pest company for clarification of the written preparation instructions and the company informed her that they were only guidelines. The Tenant states that the Landlord said he would help her with the furniture and electrical parts. The Tenant states that the Landlord got her a vacuum and that she constantly vacuums. The Tenant states that the technician said that the heat treatment was good for 45 days and that if bugs were found before that time they would return and treat the unit at no cost. The Tenant states that the Landlord should have had the heat company back instead of the chemical company.

The Tenant provided written submissions setting out her denials that she caused or contributed to the presence of the bugs. These submissions also set out the Tenant's statements of other ways in which bugs can be introduced into a building. The Tenant states that she does not bring home or collect used articles from stores or outside. The Tenant, a senior, states that her bed was removed due to the bugs, that she has not been sleeping on a bed for some time now and that she only sleeps in a sleeping bag that she launders regularly. The Tenant states that she has not experienced bedbugs before, did not know what they looked like and knew nothing about them.

The Landlord states that while the heat treatment could have been done the second time, it was decided to use chemical treatment as it was a small infestation and as the chemicals last for a while and would act on any bugs brought in by the Tenant. The Landlord states that the only way the bugs could enter the unit is from a person or the Tenant carrying them in.

Analysis

Section 47 of the Act provides that a landlord may issue a notice to end tenancy for cause for various reasons as set out in that section. Where a notice to end tenancy for cause 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.

The Landlord's evidence of a cross-over of tenants between an infested building and the Tenant's building prior to the Tenant reporting an infestation does not support the Landlord's belief that the Tenant introduced the bugs. As the Landlord has no evidence of the Tenant introducing the bugs by purposeful act or negligence and considering the myriad ways a bedbug can enter a unit, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant caused the initial infestation in her unit. Although there was a 9 month gap until the bugs again were reported in May 2015, the Landlord does not have any evidence of the Tenant introducing the bugs during this gap. Nor does the Landlord have any evidence that the Tenant acted negligently to introduce the bugs, such as bringing into the unit likely infested objects. The Landlord's evidence that the treatment companies do not guarantee their work tends to support that the bugs could still be present from the initial infestation of the building in 2014. While a pest company may report a 90% success rate, without supporting documentation of such a success rate in multi-family units with population movement between units and other areas over similar periods of time, I do not find this evidence to be sufficiently persuasive in the present case. For these reasons I find that the Landlord has failed to establish on a balance of probabilities that the Tenant was responsible for the introduction of the bedbugs in either 2014 or May 2015.

As the Landlord either assisted the Tenant with the preparation of the unit for the treatments or the unit was adequately prepared, I find that the Landlord has not substantiated that the Tenant's lack of preparation caused the bugs to continue to infest the unit or other units. While it is true that the Tenant may be reporting the presence of bugs at a very late stage, there is no evidence that this lag is done purposely by the Tenant. Accepting the Tenant's credible evidence of not noticing bothersome bites or marks and considering the Landlord's admission that the Tenant may not be able to see the bugs, I find that the Landlord has not shown that the Tenant has been negligent in reporting the bugs. I note that the Tenant reports that this is the first experience in her life with bed bugs.

For the above reasons, I find that the Landlord has failed to substantiate that tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or put the landlord's property at significant risk. As a result I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice.

Conclusion

The Notice is cancelled and of no effect.

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: August 8, 2015

Residential Tenancy Branch

