



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Park Royal Ventrues Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPC, OPR, MNDC, MNSD, FF
Tenants: CNC, CNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel two notices to end tenancy.

The hearing was conducted via teleconference and was attended by two agents for the landlord and one of the tenants.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the landlord's claim for compensation from the tenants for a failed bedbug treatment. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The landlord's monetary claim, which is not for any amount of rent, is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month or the 10 Day Notice. I exercise my discretion to dismiss the landlord's monetary claim. I grant the landlord leave to re-apply for their monetary claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; an order of possession for cause; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 67, and 72 of the *Act*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on July 26, 2005 for a 1 year fixed term tenancy beginning on August 1, 2015 for a monthly rent of \$1,050.00 due on the 1st of each month with a security deposit of \$415.00 paid on February 5, 1999.

Both parties submitted into evidence the following relevant documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 21, 2015 with an effective vacancy date of July 31, 2015 due to \$315.00 in unpaid rent; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on July 21, 2015 with an effective vacancy date of August 25, 2015 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk and there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the \$315.00 owing from the tenant was a charge back to the tenants for a bedbug treatment that could not be completed because of the tenants' failure to prepare the rental unit for the treatment. The landlord confirmed that no other amounts for rent were owed.

The landlord submits that there has been an ongoing bedbug problem in this rental unit since July 2014 at which time the landlords provided direction to the tenants to prepare for a treatment by way of a letter dated July 10, 2014.

On July 23, 2014 the landlord wrote another letter to the tenants advising of a clutter and storage problem on their balcony and failure to prepare the rental unit for the treatment referred to above. This letter goes on to warn the tenants that failing to prepare the unit for treatment is putting their tenancy in jeopardy.

On April 4, 2015 the landlord wrote a reminder letter to the tenants advising of a bedbug treatment on April 8, 2015 and warned that as the tenants had not prepared the unit for the last treatment they would be charged for the visit and that the landlord would consider this action as a breach of a material term of the tenancy agreement and they would issue a 30 day notice (1 Month Notice to End Tenancy for Cause).

Subsequently the landlord wrote a letter dated June 10, 2015 that made reference to a meeting the parties had on June 5, 2015. This letter outlined that a treatment was scheduled for June 11, 2015 and the tenants were required to prepare the unit for this treatment. This letter ended with the following paragraph:

"At the conclusion of our conversation we confirmed your understanding that this will be the final time that we will reverse an eviction notice based on a re-infestation of bedbugs. We have done our due diligence to treat the infestation in your unit. Once we receive a clear report from Orkin that your suite has been successfully treated, should your suite become infested again, we will have no choice but to serve you with a 1 Month Notice to End Tenancy for Cause. We hope that it will not come to this."

The landlord submitted into evidence a report from Orkin dated July 17, 2015 stating that there was an “alert” in the tenant’s unit that there were live bugs on the couch in the living area. The landlord did not provide a copy of any such report for the period June 11, 2015 to July 17, 2015.

The landlord issued the 1 Month Notice to End Tenancy for Cause on July 21, 2015 and submitted a letter dated the same date which outlines that based on the July 17, 2015 report and that “several samples of bed bugs found again in your apartment. As per our last letter (attached) the landlord finds you in breach of a material term of your rental agreement and we are serving you with a one month notice to end tenancy for cause...”

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Rent is defined in Section 1 of the *Act* as money paid or agreed to be paid by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.

Section 46(6) of stipulates that if a tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them the landlord may treat the unpaid utility charges as unpaid rent and give notice to end the tenancy under Section 46.

I find no clauses in the tenancy agreement submitted by the landlord that requires the payment of any utilities directly to the landlord and I do not find that the payment for a failed bedbug treatment could be considered a utility.

As a result, I find that at the time the 10 Day Notice to End Tenancy for Unpaid Rent there was no rent outstanding.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by 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 or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

From the evidence submitted by the landlord I note that the landlord did not provide a report from Orkin between the period of June 11, 2015 and July 17, 2015 stating that the rental unit was clear of all bedbugs.

As such, I find that the criterion set by the landlord specifically: “Once we receive a clear report from Orkin that your suite has been successfully treated, should your suite become **infested again**, we will have no choice but to serve you with a 1 Month Notice to End Tenancy for Cause” had not been met prior to the issuance of the 1 Month Notice [emphasis added].

That is to say that the landlord's letter of June 10, 2015 required that Orkin provide a report that there was no longer a bedbug problem and that should a new infestation begin the landlord would issue a 1 Month Notice. As the only report provided to the tenant was dated July 17, 2015 and it showed that there were still bedbugs, I find that the report indicates that the previous infestation had not been eradicated as per the landlord's prerequisite condition noted above.

In addition, the landlord has failed to provide any evidence that could corroborate that the tenants were responsible for any infestation. Clearly, from the landlord's evidence the landlord has been treating many units in the residential property and has provided no other evidence that this or any other infestation was caused by these tenants.

Conclusion

Based on the above, I order the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause issued on July 21, 2015 are cancelled. I caution the tenants however, that failure to comply with the requirements to prepare their rental unit for any required treatment is a serious issue and they should consider themselves sufficiently warned that failure to do so may provide the landlord with cause to end their tenancy.

As a result, I dismiss the landlord's Application for Dispute Resolution in its entirety.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenants for their application. I order the tenants may reduce a future rental payment in this amount in satisfaction of this compensation, pursuant to Section 72(2)(a).

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: October 05, 2015

Residential Tenancy Branch

