



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 to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on August 10, 2015. The Tenant filed seeking to cancel a 1 Month Notice to end tenancy issued for caused.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord, the Tenant and the Tenant's legal advocate. The application listed one respondent Landlord, the corporate Landlord. Testimony was provided by two agents for the corporate landlord who meet the definition of a landlord. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony. The Landlords affirmed receipt of the Tenant's application, hearing documents, and evidence and no issues were raised regarding service or receipt of that evidence. The Landlords testified that they did not submit documentary evidence in response to the Tenant's application.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued July 26, 2015 be upheld or cancelled?

Background and Evidence

The undisputed evidence was that the Tenant entered into a written tenancy agreement that began on February 01, 2012. The current monthly rent of \$600.00 is payable on or before the first of each month and on January 27, 2012 the Tenant paid \$300.00 as the security deposit.

The Landlords testified that the building never had bed bugs until August 2014 when bed bugs were found in the Tenant's rental unit. The Landlord spent upwards of \$800.00 for treatments to the Tenant's rental unit and adjoining units on August 11, 2014 and August 20, 2014. The Landlords confirmed that there had been a minor infestation in adjoining rental units.

The Landlords argued that it appeared to them that the Tenant had been going to second hand stores to get his furniture, C.D.'s, and DVD's because the bed bugs were found in his bed, his futon, and in several C.D. and DVD cover jackets.

The Landlords submitted that in July 2015 the Tenant's neighbour reported that they had bed bugs. They hired the pest control company to conduct treatment in the entire building and even brought in the dog to sniff out the location of the bed bugs. They asserted that this second infestation cost them over \$5,000.00 in treatment costs.

They argued that there was a heavy presence of old feces and bed bugs inside the Tenant's rental unit. The Landlords testified that the Tenant was told to remove his bed, sofa, and futon to try and eliminate the presence of the bed bugs. They argued that the Tenant and his care worker failed to take action.

The Landlords submitted that the building is all clear of bed bugs except for the Tenant's rental unit. They argued that they have a letter which confirms the bed bug infestation originated in the Tenant's rental unit.

The Landlords stated that they served the Tenant with an eviction notice because both the Tenant and his care worker refused responsibility. When asked what they meant by "refused responsibility" the Landlords stated that the Tenant and his worker refused to pay for the treatments. Upon further clarification the Landlord stated that they are afraid that the infestation will continue because the Tenant is not taking responsibility and has not removed all of the affected furniture.

The 1 Month Notice was issued on July 26, 2015, pursuant to Section 47(1) of the Act listing an effective date of August 31, 2015 for the following reasons:

- 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

The Tenant testified that he has gotten rid of his bed, futon, couch and most of his furniture leaving only one black chair. He argued that he has even spread powder around his rental unit in attempts to get rid of the bed bugs.

The Tenant submitted that the first time he told his Landlord that there were bed bugs in his rental unit they did not do anything about it. He argued that he spoke with the former Resident Manager about four times before they took action. The Tenant stated that his neighbour also has bed bugs but he has not done anything about it.

The Tenant submitted that he had received a notice on his door about treatment. However, his worker did most of the work to help get rid of the bed bugs.

The Resident Manager submitted that he has been employed at this building since August 2014. The first treatment for pest control was conducted in August 2014 shortly after he was hired. Then when the Tenant's social worker called him in July 2015 to report the bed bugs again, he called the pest control company and started the treatment process again.

In closing, the Landlords argued that it is evident that the bed bugs originated in the Tenant's rental unit because their presence is heaviest in his rental unit. They stated they inspected the Tenant's rental unit in early October 2015 and the foam and cover that was originally on the Tenant's mattress was still in the rental unit. They confirmed that the Tenant had not been issued any written warnings; however, they did give him written follow up instructions.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Given the ability of bed bugs to jump from one article to another; travel through electrical outlets into adjoining units; travel with unsuspecting hosts; and the ability to

lay dormant for many months; in absence of documentary evidence, I cannot determine with any certainty the origin of the bed bugs in this case.

In addition, there was undisputed evidence that bed bugs had been found in adjoining rental units. Therefore, I find the Landlords submitted insufficient evidence to prove the Tenant was the cause of the bed bug infestation.

In response to the Landlords' assertions that the Tenant failed to take action or failed to take "responsibility", I accept the Tenant's submissions that the majority of his furniture had been removed. Notwithstanding the Landlords' submission that they gave the Tenant a copy of the follow up procedures, there was no evidence before me to support that argument or to prove what procedures were to be completed.

Policy Guideline 1 provides clarification of the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and states that the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control. Therefore, in absence of evidence to prove the contrary, I find the Landlords have not met the burden to prove the Tenant is responsible for the costs of recent pest control bed bug treatments.

Based on the above, I find the Landlords' submitted insufficient evidence to prove 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 or put the Landlord's property at significant risk. Accordingly, I uphold the Tenant's application and order the 1 Month Notice issued July 26, 2015 cancelled.

Conclusion

The Tenant has been successful with his application and the 1 Month Notice to end tenancy issued July 26, 2015 has been cancelled. This tenancy continues to be in full force and effect until such time as it is ended in accordance with the *Act*.

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 22, 2015

Residential Tenancy Branch

