



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MND, MNSD, MNDC, FF; CNC, OLC, ERP

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenants' 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

The landlord attended and was represented by its agent, who confirmed he had authority to act on behalf of the corporate landlord. The tenants both attended and were represented by their advocate. All parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord provided evidence that the tenants were served with the dispute resolution package by registered mail on 25 September 2015. Neither party raised any issue with service of evidence or the applications.

The agent testified that the landlord personally served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 28 August 2015. The tenants did not contest service. On the basis of this evidence, I am satisfied that the tenants were served with the 10 Day Notice pursuant to section 88 of the Act.

Prior Hearing

The tenants made a prior application to the Residential Tenancy Branch seeking an order that the landlord stop bedbug treatments and inspections.

The prior arbitrator made the following relevant finding:

Bed bugs are an insidious and difficult infestation to control, and upon bed bugs being found present in or near the rented premises, a landlord is obligated to take immediate steps to control or eradicate the problem. The landlord in this case has assigned this task to a qualified pest control company, and I find no impropriety has occurred in the landlord's initiatives. Accordingly, I decline to order that the landlord not bother the tenants with this issue: on the contrary the tenants must cooperate with the landlords and comply with the pest control company's requirements in terms of preparation of their unit for the bed bug treatment.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to an order that the landlord comply with the with the Act, regulation or tenancy agreement? Are the tenants entitled to an order that the landlord make emergency repairs to the rental unit?

Background and Evidence

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

This tenancy began 1 December 2009. The parties entered into a written tenancy agreement dated 17 November 2009. Initially rent was \$750.00. Current rent is \$809.00. The landlord continues to hold the tenants' security deposit in the amount of \$375.00, which was collected at the beginning of the tenancy.

On 28 August 2015, the landlord served the tenants with the 1 Month Notice in person. The 1 Month Notice was dated 28 August 2015 and set out an effective date of 30 September 2015. The 1 Month Notice set out that it was given as:

- the tenant or 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.

The agent testified to the following events:

- 15 April 2015: The landlord arranged for a bedbug dog to attend at the rental unit. The dog identified bedbug activity in the rental unit.
- 28 April 2015: A pest control company attended at the rental unit, but was unable to treat the unit as the rental unit was not adequately prepared.
- 1 June 2015: The pest control company attended at the rental unit, but was unable to treat the unit as the rental unit was inadequately prepared. The tenants had made minimal effort to prepare the rental unit for treatment.
- 16 June 2015: The tenants refused access to the rental unit and pest control was unable to treat the rental unit.
- 28 July 2015: The tenants were warned that treatment was going to occur on 10 August 2015. The tenants were warned that the unit must be prepared for treatment or the landlord would pursue and end to tenancy.
- 10 August 2015: Pest control attended at the rental unit. The unit was not adequately prepared. The technician noted lots of clutter and debris. The technician noted live bedbugs in the rental unit. The control company attempted to treat.
- 28 August 2015: The rental unit was inspected and a bedbug infestation was observed. The agent testified that the tenants were hostile to the inspectors.

The agent testified that the landlord is using a perimeter spray to prevent spread of the bedbugs from the tenants' rental unit to other rental units within the property. The agent testified that the landlord's claim in the amount of \$1,500.00 was an estimate of the additional costs incurred by the landlord as a result of the tenants' lack of cooperation with the pest treatment program. The agent admits that the landlord did not provide reports relating to the specific unit only and that other rental units were dealt with on the same dates.

The tenants deny that they have bedbugs in the rental unit. The tenant VM testified that neither she nor her partner has received bites.

The tenant VM testified that the 28 April 2015 visit was supposed to be cancelled.

The tenant VM testified that she did not know that the pest company was attending to treat on 1 June 2015. The tenant VM testified that she was not given proper notification of how to prepare the rental unit. The tenant VM testified that she did not receive notification for the treatment that was scheduled for 16 June 2015.

The tenants stated the following about the 1 June 2015 treatment in their written submissions:

We went away on the first of June 1, 2015 and came back and found bed bugs on the mattress. [tenant RM] and [tenant VM] got rid of them and found out that the Landlord and [the pest control company] dog come in while we were away. So we know that they were planted.

The tenant VM testified that on 28 July 2015 she was informed of the spraying set to occur 10 August 2015. The tenant VM testified that on 10 August 2015 the technicians attended. The tenant VM testified that her belongings were in plastic garbage bags on the balcony, kitchen and bathtub. The tenant VM testified that the technician told VM that the technician found bedbugs; however, the tenant VM did not see any bedbugs when she vacuumed.

The tenant VM testified that she did not know why she was served with the 1 Month Notice. The tenant VM testified that the technicians have not shown her bedbugs.

The tenants submit that the costs of preparation represent a financial hardship. The tenant VM testified that she and her partner are disabled and cannot be very speedy in preparing the rental unit. The tenant testified that the tenants are working on decluttering the rental unit, but it is occurring at a slow pace.

The agent testified that there are two preparatory notices that the landlord invariably sends out before inspections or treatments (as applicable). The agent testified that these notice are delivered in person or posted.

I was provided with a copy of the preparatory notice provided by the pest control company in respect of the bedbug dog inspection. The notice requires limited preparation for the purposes of inspection.

I was provided with a copy of the preparatory notice provided by the pest control company in respect of the bedbug treatment preparation. The notice sets out that the treatment is a two-part treatment. The notice sets out the following required preparation for treatment including moving furnishings away from wall, removing clutter from the floors, and sealing personal items in garbage bags.

The tenants provided in their evidence a letter dated 9 June 2015 from the agent to the tenants. The letter sets out that the tenants have failed to comply with necessary preparatory work. The letter sets out a deadline of 15 June 2015 to comply with necessary preparation and reiterates the required preparation. The letter sets out that the landlord will initiate an end to tenancy for failure to comply.

I was provided with a letter from the agent to the tenants dated 28 July 2015. The letter notes that the rental unit was inspected and that it was not prepared for treatment. The letter notes that the pest control company will return 10 August 2015. The letter reiterates the preparation required. The letter sets out that if the tenants do not prepare the rental unit in accordance with the requirements that an end to tenancy would be pursued to protect neighbouring units. The letter enclosed the prior decision.

I was provided with various reports from the pest control company that make the following comments with respect to the rental unit:

- 15 April 2015: *D1-hit to couch and recliner in front of hallway. No access in the hallway because they have stuff blocking it. First bedroom hit to queen mattress and box spring (live seen), second bedroom hit to queen bed. There is a very loud bird in the living room and they have 2 cats, they couldn't find one of them.*
- 28 April 2015: *No treatment. Unit not prepared. No baseboard access, extremely cluttered, all dressers and closets full of clothing. Bedding on bed. Recommend prep inspection prior to treatment.*
- 1 June 2015: *Unable to do treatment today due to no prep being done. All dressers are full. All closets are full. Beds are made and limited access to*

baseboards. All clothing/linens need to be bagged and laundered also furniture needs to be pulled away from the walls and closets need to be emptied.

- *16 June 2015: Tenant refused us to treat his unit. He cancel*
- *10 August 2015: Main bedroom had about 10 or 12 Pieces of wood furniture inside it. Very difficult to move around in and treat furniture. Found over 10 live bed bugs inside box spring buried inside matting. Tenant was adamant they had no bed bugs or bites. The K-9 unit was right. They had bed bugs. ... Found 2 live adult bed bugs and lots of activity on box spring. Prep in middle bedroom was ok. A lot of furniture and difficult to move around.*
- *28 August 2015: There is a bunch of stuff on the balcony. I came out in the hall and told them I found some. They said where and to show them. So the husband came back in the unit with me and I showed him the two live that I found. Then he asked me where else and I told him that was the only place I found live, but the dog hit to other places. Then we both came out into the hall and he said to his wife "she said the whole place is infested" and then the wife was mad and said "ya your head is infected" I just kept walking because these people have always been a problem and say stupid stuff. ...Hit to queen bed and side table (live found)...B1-hit to queen bed and dresser...C1-hit to couch and two recliners and the wicker dresser beside the couch. (Caged bird is on this) lots of stuff piled behind couch*
- *30 September 2015: Dust all perimeter of this unit.*

[as written]

I was provided with an invoice dated 30 October 2015 that sets out the estimated fees chargeable to the rental unit for inspections and treatment. The invoice is in the amount of \$695.90.

Analysis

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.

The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - 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. The landlord has set out in its 1 Month Notice, among other reasons, that the tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. In particular, the landlord alleges that by failing to comply with pest protocol procedures, the tenants are seriously jeopardizing the lawful right of the other occupants of the building to live in a pest-free environment.

The tenants deny that there are bedbugs in their rental unit. The tenants suggested that the pest control company or the landlord have planted bedbugs in the rental unit. I do not find the tenants' claims credible. The landlord has provided business records that show that canine and human inspection have revealed bedbugs within the rental unit. I have not been provided with any plausible reason why the landlord or its agents would falsify claims of bedbugs. I find, on a balance of probabilities, that there were bedbugs in the tenants' rental unit at the relevant time.

The tenants have at various points in their testimony and written submission denied receiving notice of treatments or preparatory requirements. I do not find the tenants' claims credible. The landlord has provided clear evidence with consistent documentary supporting evidence that shows the tenants were provided with notice of inspections and treatments. The tenants routinely uncooperative with pest control efforts in the building over a span of months. The landlord has provided ample warning of the requirement to comply with treatment protocols and that failure to comply would result in the landlord seeking an end to their tenancy.

As the tenants were cautioned at the prior hearing, pursuant to subsection 32(1) of the Act, the landlord has an obligation to provide rental units to the other occupants in the residential property that comply with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupant by a tenant. By implication the other occupants of the residential property have a corresponding right to rental units that comply with subsection 32(1) of the Act. 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.

The tenants have submitted that their age, disability, and finances prevent them from cooperating with the pest control protocol. While I am sympathetic to the tenants' circumstances, the tenants have the responsibility not to hamper the landlord's pest treatment plan by cooperating fully. Furthermore, it appears that the tenants' main

obstacle to cooperation less so their circumstances and more so their firmly held belief that there is no bedbug problem in their rental unit.

The tenants did not cooperate at all at the beginning of this pest treatment cycle. This cooperation is part of the tenants' obligations to provide a reasonable health cleanliness and sanitary standard through the rental unit within the specific context of an identified bedbug threat. After being cautioned by the prior arbitrator, the tenants cooperated in part; however, their preparation was still insufficient. I find that by repeatedly failing to cooperate with pest treatment and control, the tenants are significantly jeopardized the other occupants' lawful right to rental units that comply with subsection 32(1) of the Act.

On this basis, I find that the landlord has substantiated the notice pursuant to subparagraph 47(1)(d)(ii) of the Act and the 1 Month Notice was validly issued. The tenants' claim to cancel the 1 Month Notice is dismissed without leave to reapply. The landlord's application for an order of possession is granted.

As the effective date of the 1 Month Notice has now passed, the landlord is entitled to an order of possession effective **the later of two days from service on the tenants or the end of the period for which the tenants have paid for their use and occupancy** of the rental unit.

The landlord has applied for \$1,500.00 in compensation from the tenants as a result of costs incurred by the tenants' noncompliance. In support of the landlord's claim, the pest control company has provided a report that attempts to apportion the costs associated with treating the rental unit. This invoice is in the amount of \$695.90.

To be successful in such a claim, the landlord must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the tenant. The landlord has provided me with an invoice that substantiates less than half the total claim. Further, the agent admits that this invoice was based on estimates made after the fact as per invoice and other units were treated or inspected at the same time. On this basis, I find that the landlord has failed to meet its burden proving its claim for damages. I therefore dismiss this portion of the landlord's claim without leave to reapply.

As the landlord has been successful in its application, I order that it is entitled to recover the cost of its application from the tenants. The landlord is provided with a monetary order in the amount of \$50.00. Pursuant to paragraph 72(2)(b) of the Act, the landlord may choose to withhold the monetary award from the tenants' security deposit in which case the value of the tenants' security deposit is reduced by \$50.00.

The tenants set out in their application that they seek an order that the landlord comply with the Act, regulation or tenancy agreement and an order that the landlord make emergency repairs to the rental unit. There were no additional details of this application set out in the tenants' claim. Further, there were no submissions or evidence provided at the hearing in respect of this claim. As the tenants have not provided any basis for me to make such an order, I dismiss this portion of the tenants' claim.

Conclusion

The tenants' claim is dismissed in its entirety.

The landlord is provided with a monetary order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession. 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.

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: December 08, 2015

Residential Tenancy Branch

