



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Redwood Apartments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end a tenancy and for an order cancelling a notice to end the tenancy for cause.

The tenant attended the hearing, gave affirmed testimony and was accompanied and assisted by a Support Worker. An agent for the landlord company also attended and gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. The tenant also provided evidentiary material in advance of the hearing, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Should the tenant be given more time than prescribed to dispute a notice to end the tenancy given by the landlord?
- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on August 9, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$435.00 per month is payable on the 1<sup>st</sup> day of each month and the tenant currently owes \$10.00 due to a rental increase effective August 1, 2015. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$212.50 which is still held in trust by the landlord and no pet damage deposit was collected.

On December 18, 2015 the apartment building caretaker personally served the tenant with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided by the tenant. The notice is dated December 18, 2015 and contains an effective date of vacancy of January 31, 2016. The reasons for issuing the notice are:

- 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.

On December 9, 2015 the landlord's agents were advised that the tenant's suite had bedbugs so arrangements were made for an inspection December 11 with a pest control company, and the bugs were confirmed. The tenant indicated he had problems since summer but didn't tell the landlord's agents so it was a pretty serious infestation. The fellow from the pest control company was concerned about a lot of storage of items in the tenant's apartment that needed to be removed, such as piles of plastic food containers and bottles, cans, paper, recyclables, cardboard, plastic bags, bottles and other items throughout the entire apartment.

The landlord had issued a cleanup notice to the tenant in September, 2015 after an inspection on September 16 to have all items cleared up. The tenant had a problem with mice at that time and the landlord's agents told the tenant he couldn't leave all that garbage in the suite and not expect rodents. The December inspection showed that some items had been cleaned up but some of the items had been replaced with other items.

The landlord's agents advised the tenant how to prepare the apartment on December 12 for fumigation. Those instructions included clearing all garbage, bottles and other items out of closets, out of the apartment, move everything away from walls, and all items taken out needed to be bagged to eliminate transporting bugs and that containment was very important. The tenant was also given a checklist from the pest control company with a date and time of treatment and had specific instructions about preparation and how long he needed to be out of his rental unit. A copy of that checklist has been provided by the tenant, which also states that the mattress had to be bare.

On December 17 the treatment people arrived and the tenant had removed his mattress from the premises, had taken it outside, through the common hallway and out to the dumpster without covering it, leaving it totally exposed. There were bugs on it and were still there in the dumpster as confirmed by pest control fellow, leaving risk of spreading throughout. There have been no previous issues of bed bugs in the apartment complex and a second case has now been reported. Neither the landlord's agents nor the pest control people can confirm it's from the tenant's rental unit, however the landlord's agent

is concerned about future tenancies; no one wants to rent a unit that has had a history of bed bugs.

The landlord told the pest control people to fumigate even though the checklist hadn't been followed by the tenant, and they did what they could to spray among stuff inside the rental unit. The landlord's agent had arranged with the caretaker to completely vacuum the common hallway between the tenant's suite and the outside door, although the hallway was not fumigated. The apartments on both sides of the tenant's rental unit were also checked but no bugs were found. Live pests, however were found in the hallway.

On January 11, 2016 the pest control people returned for a follow-up treatment as part of the process and reported the bottles, cans, plastics and other items were still in the way but they would do the best they could. The tenant's rental unit was not cleaned to the standard needed, but minimal evidence was found. There were still bugs in there but a lot fewer.

The landlord issued the notice to end the tenancy due to the tenant's failure to follow instructions, for not cleaning the suite, and dragging the mattress through the building after instructions to not do so. The landlord's agent also submits that this is not the first instance of hoarding behaviour by the tenant considering the previous rodent infestation. The landlord has serious concerns of unwanted pests in the building and a fire hazard.

**The tenant** testified, partly through his Support Worker, that the tenant was not given any written notice from the landlord that said anything of cleaning or the consequences of not doing so, nor about expectations of preparing for treatment. The tenant received a 2-page document from a pest control company with 7 items to complete prior to fumigation. It also stated that if the rental unit was not ready, no treatment would take place, and since the pest control company treated it, the tenant believed it was cleaned to the standard required.

The tenant's Support Worker has been assisting the tenant since September, 2015 and helped the tenant clean up the rental unit. The Support Worker does not believe the condition of the rental unit is as serious as the landlord's agent depicts, but the tenant agrees some of the items in the rental unit are unnecessary and he knows what he has to do going forward without accumulating more items.

The tenant and his Support Worker followed what was written on the checklist from the pest control company, although not certain that it was done to the letter. The checklist also said that all mattresses must be bare and broken down. It doesn't say anything else about the bed. The tenant purchased large clear plastic bags and other regular

plastic bags and everything else was sealed in a bag prior to removing it from the rental unit.

The tenant also testified that he is mystified by the testimony of the landlord's agent that another unit has bed bugs or that it can be attributed to the tenant. That unit is on a different floor and on the other side of a hallway, and given that the 2 units next door to the tenant's rental unit do not have any evidence of the pests, the tenant doubts that the unit on the floor above would have anything to do with the tenant's rental unit. Further, the hallway wasn't fumigated so it must not have been a concern.

### Analysis

Firstly, with respect to the tenant's application seeking more time to dispute a notice to end a tenancy, the landlord's agent testified that the tenant was personally served on December 18, 2015. The tenant filed the application for dispute resolution on December 23, 2015 which is clearly within the 10 days required by the *Act*, and therefore I find that no further time is necessary.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act* which can include the reasons for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The tenant's position is that he didn't receive written instructions or expectations from the landlord about cleaning, but did what the pest control company's checklist instructed, although maybe not to the letter. Those instructions also said that if the checklist wasn't completed the treatment would not take place, but it did take place so he thought he was in compliance. The instructions also said that the bed had to be bare.

The landlord's position is that the tenant was given verbal instructions regarding preparation by the landlord's agents and then given the checklist from the pest control company. The tenant didn't follow the checklist and the landlord's agents asked the pest control company to spray anyway. I don't think the tenant knew that.

The landlord has not provided any evidentiary material at all, and the tenant has provided a copy of the checklist. The onus is on the landlord to establish that 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 tenant and the tenant's witness testified that they bagged items and followed the checklist which also specified

that the bed had to be bare. No written instructions were provided by the landlord to the tenant, and I accept that the tenant did what he believed to be required of him.

The landlord also testified that the tenant has had a hoarding problem in the rental unit and in the past, rodents have been an issue. The tenant was advised to clean up in September, and the landlord believes some was done, however not entirely and by December had replaced some of it with other items. The tenant and the tenant's support worker advised that they do not believe the condition of the rental unit is as serious as the landlord's agent depicts, and there is no evidence to support the landlord's testimony of hoarding.

In the circumstances, I am not satisfied that the landlord has met the test, and I cancel the 1 Month Notice to End Tenancy for Cause.

### Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated December 18, 2015 is hereby cancelled and the tenancy continues.

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: February 12, 2016

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Residential Tenancy Branch

