



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PR LOTUS HOTEL LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause set aside. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. Each party acknowledged receipt of evidence submitted by the other. Both parties gave affirmed testimony.

Issues to be Decided

Is the tenant entitled to have the notice to end tenancy set aside?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about November 1, 2004. Rent in the amount of \$414.00 is payable in advance on the first day of each month. The landlord stated that the tenant has caused an infestation of bedbugs in his units and the adjacent units. The landlord stated that the tenant collects garbage and stores it in his unit which causes the bedbug infestation. The landlord stated that the tenants' poor cleanliness and reckless behaviour has caused the owner to incur substantial costs to have pest control spray for bedbugs. The landlord stated that the tenant failed to report the bedbugs and therefore breached a material term of the tenancy.

The landlord stated that the tenant is also abusive and aggressive. The landlord stated that the tenant yells and argues with the staff on a regular basis.

Based on the above the landlord issued a One Month Notice to End Tenancy for Cause on May 19, 2016 with an effective date of June 30, 2016. The landlord issued the notice on the following two grounds:

- 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.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant gave the following testimony. The tenant stated that he discovered bedbugs in his unit after he received a notice from the landlord that they would be spraying the unit for bedbugs. The tenant stated that “since they were spraying two days from when I got the notice, I decided to wait to let them know about the bedbugs I found, and I did tell the technician immediately when he came to spray”.

The tenant stated that he only collects bottles and cans to help make “ends meet”. The tenant stated that he keeps his unit neat and cleans it as is required. The tenant stated that the landlord used to do monthly checks of each suite to inspect the cleanliness and condition but they haven’t done that for several years. The tenant stated that the landlord has no idea what the condition of his unit is at this time. The tenant stated that he did get upset once with the staff and regrets his comments. The tenant stated that he apologizes for the outburst and that it won’t happen again.

The agent for the tenant gave the following submissions. The advocate submits that the landlords’ documentary evidence is fraudulent. The advocate submits that the warning letters were all produced for this hearing but were never served on the tenant. The advocate submits that the dates of these letters do not provide a clear or logical timeline and illustrates that the landlord did not serve them on the tenant. The advocate states that since none of these notices have ever been served, the landlord has not given the tenant an opportunity to correct their behaviour. In addition, the advocate stated that the landlord did not provide sufficient evidence to prove that the tenant was the cause of the bedbug infestation. The advocate submits that the landlord has not met the burden as per Section 47 of the Act and that the notice should be set aside and the tenancy continue.

Analysis

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 arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlord made allegations of the tenants' behaviour that was denied by the tenant. The advocate made an allegation of fraudulent documentation; the landlord stated that they were simply typos and not fraud. I accept the landlords' explanation that there wasn't anything untoward about the notices, however the inaccuracies and errors make them unreliable and I give them little weight.

In addition, the landlord continually stated that the pest control company sent an e-mail stating that bedbugs were in the subject unit for several months, however the letter did not unequivocally state that the tenant was responsible for the presence of the bedbugs, in fact there was no mention of where responsibility lies. I agree with the tenants' advocate that the landlord did not provide sufficient documentation to support the grounds to which the notice was issued. The tenant stated that he didn't notice any bedbugs as he didn't get any bites or see them until after the landlord issued a notice that the building was to be sprayed. I accept the tenants' testimony.

Based on the insufficient evidence before me, the disputing evidence of the tenant and on a balance of probabilities, I hereby set aside the notice to end tenancy.

Conclusion

The One Month Notice to End Tenancy for Cause dated May 19, 2016 with an effective date of June 30, 2016 is set aside. It is of no effect or force. 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: July 11, 2016

Residential Tenancy Branch