



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 July 15, 2016. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's legal advocate. The Landlord and Tenant gave affirmed testimony. 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.

On August 22, 2016 the Tenant submitted 5 pages of evidence to the Residential Tenancy Branch (RTB) which included 4 photographs. The Tenant affirmed that he served the Landlord with copies of the same documents that he had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's submission as evidence for these proceedings.

On September 1, 2016 the Landlord submitted 26 pages of evidence to the RTB via fax. That evidence included photographs that were illegible as they were black due to the fact that a fax machine does not clearly receive or print photographs. The Landlord affirmed that they served the Tenant with copies of the same documents that they had served the RTB. The Tenant acknowledged receipt of these documents on Friday September 2, 2016.

The Tenant's advocate acknowledged that the Tenant's evidence was submitted late and noted that the Landlord's evidence was also late. Each party confirmed receipt of the other's evidence and acknowledged through their oral submissions that they had reviewed that evidence prior to the hearing. Therefore, I considered the relevant late submissions from both parties as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord withdrawn the 1 Month Notice to end tenancy issued June 24, 2016?
2. Should the 1 Month Notice to end tenancy issued July 8, 2016 be upheld or cancelled?
3. If upheld, should the Landlord be issued an Order of Possession?

Background and Evidence

The Landlord testified the parties entered into a written fixed term tenancy agreement which began in October 2011 and switched to month to month after one year. Rent of \$475.00 is currently payable on the first of each month. On September 13, 2011 the Tenant paid \$300.00 as the security deposit.

The Landlord read section 5 of the Tenant's tenancy agreement into evidence which included, in part, the Tenant's requirement to keep his rental unit at a level of cleanliness for health and/or safety reasons. The Tenant did not dispute the Landlord's submission.

Upon review of the two 1 Month Notices to end tenancy the advocate argued that the Landlord had told her they had withdrawn the first notice that was issued on June 24, 2016. She stated she was told that the Landlord would only be proceeding with the second Notice that had been issued July 8, 2016.

After a brief discussion the Landlord confirmed they would withdraw the first notice to end tenancy. The Landlord stated they wished to proceed with the second 1 Month Notice that was issued July 8, 2016 listing an effective date of August 1, 2016. The reason listed for issuing that Notice was as follows: "*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 she was personally involved in the operation of the pest control program they had established for the Tenant's rental building. She stated they had the entire building inspected on May 26, 2016 and the Tenant's unit was described as follows: there was evidence of cockroaches, bedbugs, and mice; the unit was highly infested; there was the presence of hygiene issues; and the condition of the Tenant's rental unit was causing problems to adjoining suites.

The Landlord submitted evidence of letters served upon the Tenant informing the Tenant of his responsibility to clean and ready his rental unit for pest control and to

advise him of a mandatory meeting that was scheduled for June 8, 2016 in the amenity room in the building. The Landlord stated the meeting was mandatory for all tenants so the pest control company could explain the treatment process and to provide the Tenant and all other tenants with information on how to prepare and clean their rental unit for treatment. The Landlord submitted the Tenant appeared at the meeting intoxicated and left ten minutes after the meeting started.

The Landlord served the Tenant a written warning letter on June 8, 2016 informing the Tenant that he must prepare his suite prior to the June 15, 2016 pest control treatment. She stated there were seven pages of attachments served with that letter which were the information sheets on how to clean and prepare the rental unit. The last sentence of that letter stated: *"Failure to comply with local pest and XXXX [Landlord's name] on this matter will result in a notice to end your tenancy."*

The Landlord provided evidence that the Tenant was served subsequent letters informing him of pest control treatments and the requirements for preparation and cleaning. Those letters were dated and served to the Tenant on June 22, 2016; June 23, 2016; July 7, 2016; July 13, 2016; and July 25, 2016.

A letter issued by the pest control company dated July 27, 2016 was submitted into evidence by the Landlord. That letter states, in part, as follows:

We have treated every unit over a period of 3 months at the property above. Our records show Unit XXX [Tenant's unit number] has been continuously asked (twice each month: May, June and July) to clean his unit to get the Cockroach and Mice infestation under control.

To this date, nothing has ever been cleaned or changed in this suite, therefore the cockroach and mice issue will continue as well as putting other adjoining suites in jeopardy of infestation by being cross-contaminated by this tenant's inaction.

[Reproduced as written excluding Tenant's unit number]

The Tenant confirmed that his rental unit was not prepared for the first or second pest control visit. He admitted that he had attended the mandatory meeting intoxicated and he left the meeting early.

The Advocate asserted the Tenant provided her with pictures on his telephone on July 15, 2016 which displayed his unit as being reasonably cleaned. She stated the Tenant told her the pictures had been taken that same day, July 15, 2016. The Advocate argued that the 1 Month Notice had not been issued in good faith as the Tenant's rental unit had since been reasonably cleaned.

The Advocate asserted the pest control information found at the Landlord's exhibit "o" was not clear as there is no date to indicate which date the suite was not ready. She asserted the Tenant was not the source of the pest infestation issues; rather, she had

evidence from other clients that there were holes in the building through which the rodents were entering.

The Tenant testified that he has since hired someone to clean his rental unit. He stated he did not hire someone sooner because he did not have the money at that time. The Tenant was not able to provide a date of when he paid someone to clean his unit and stated it was a friend of a friend who cleaned for him.

The Tenant confirmed receipt of all documents that had been posted to his door. He clarified that he opens his door every day so if it was posted he received it. He submitted that he had prepared his rental unit for the pest control treatments and the Landlord is simply saying he did not prepare his unit because the Landlord does not like him. He stated he never really had any infestation of rodents or insects and then stated he did have a problem with bed bugs. The Tenant then stated that there were no more pests in his rental unit. Upon further clarification the Tenant asserted the pest control treatments had gotten rid of them all.

The Advocate argued the Tenant was scheduled to go for surgery in the coming weeks and has since been recommended for home support. She argued the Tenant would co-operate with the Landlord from now on.

The Landlord stated that she has personally worked with this Tenant and the pest control program trying to get this Tenant to co-operate. She asserted the Landlord has done all they can and the Tenant simply decided not to co-operate or seek assistance sooner. She stated the Tenant's photographs of July 15, 2016 still clearly show an ashtray on the floor overflowing with cigarette butts, articles and clothing on the floor, and a garbage bag on the floor at the edge of a photograph; which she asserted was proof the unit was still not cleaned in a manner to be ready for pest control treatment.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 53 (1) of the *Act* provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) as applicable.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed on the required form, as per section 52 of the Act. I further find that the Notice was served upon the Tenant in a manner that complies with section 89 of the Act. In this case rent is payable on the first of each month; therefore, the effective date of the 1 Month Notice served on July 8, 2016 would be automatically corrected to be **August 31, 2016**, pursuant to section 53(2) 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 consideration of the circumstances presented to me during the hearing I accept the undisputed submission that the Tenant's tenancy agreement included a material term that required the Tenant to keep his rental unit at a level of cleanliness for health and/or safety reasons.

Notwithstanding the Advocate's arguments that she has evidence from other tenants that the rodents were entering their suites through various access holes; I favored the Landlord's evidence over the Tenant's. I favored the Landlord's evidence as it was consistent, credible, and supported by documentary evidence which included reports from the pest control company. The Tenant's submissions were inconsistent as he stated he never had a problem with cockroaches or rats or any pests. Then he changed his testimony to state he only ever had a problem with bed bugs before saying he no longer has an infestation of any pests; which is contradictory to the pest control reports.

Secondly, from the Tenant's own submissions the Tenant received: the written notices of inspections; the tenants' meeting notice; the information on how to prepare his rental unit for treatment; and notices of the pest control treatment dates up to July 7, 2016. The 1 Month Notice was issued July 8, 2016. The Tenant confirmed he did not have his rental unit cleaned until just before he had taken his July 15, 2016 pictures; seven days after the second 1 Month Notice was issued. Therefore, I conclude the Tenant was in breach of a material term of his tenancy agreement at the time the July 8, 2016 Notice was served.

Overall I find the circumstances presented by the Landlord during the hearing to be reasonable given the evidence before me. Accordingly, I find pursuant to section 62 of the Act, the Landlord has satisfied me that at the time the July 8, 2016 1 Month Notice to end tenancy was issued the Tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Therefore, based on the totality of the evidence before me, I uphold the 1 Month Notice to End Tenancy and I dismiss the Tenant's application for cancellation of the Notice.

Section 55(1) of the Act stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the

landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In consideration of the submissions from the Tenant that he is in receipt of income assistance; and in absence of evidence regarding payment of September 2016 rent; I grant the Landlord an order of Possession effective **September 30, 2016**.

Conclusion

The Tenant was not successful with his application and the 1 Month Notice to end tenancy issued July 8, 2016 was upheld and the Landlord was awarded an Order of Possession.

This decision is final, legally binding, and 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: September 12, 2016

Residential Tenancy Branch