



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant had named one of the landlord's agents in filing this application. The tenant's application was amended, with consent, to correctly identify the landlord.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause dated August 23, 2016 be upheld or cancelled?

Background and Evidence

The tenancy started on July 1, 2001 and the tenant is currently required to pay rent of \$1,109.42 on the first day of every month. The rental unit was described as a one bedroom apartment in a 25 storey high-rise apartment building.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it on the door of the rental unit on August 23, 2016 (the Notice). The Notice has a stated effective date of September 30, 2016 and indicates the reason for ending the tenancy is: "Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk". The tenant filed to dispute the Notice within the time limit for doing so.

In November 2015 an adjacent rental unit was treated for bed bugs. On December 1, 2015 the rental unit was inspected for bed bugs and a "high level" of bed bugs were found in the rental unit. The pest control company wrote in an email to the landlord that

the bed bugs found in the rental unit in December 2015 had been there for months and indicated that the bed bugs likely originated in the rental unit and migrated to the adjacent unit. Both the rental unit and the adjacent unit were treated for bed bugs and the wall between the two units was “dusted” with pesticide multiple times.

On December 7, 2015 the tenant in the adjacent unit issued a notice to the landlord to end their tenancy due to the stress of dealing with bed bugs and poor health. The landlord issued a letter to the tenant on December 8, 2015 where the tenant was advised: “It is the Tenants responsibility to report any pest activity within their unit. [You] did not report the bed bug infestation; this neglect caused the spread of bed bugs to surrounding units.”

In January 2016 and February 2016 a “minor” level of bed bugs were found in the rental unit and the unit was further treated. During the February 2016 inspection the adjacent unit was found to be vacant and no signs of bed bug activity. On March 1, 2016 an inspection was performed in the rental unit and no bed bugs were located. After a follow up inspection six weeks later it was determined that the bed bugs were successfully eradicated.

In August 2016 the tenant reported having bed bugs again. When the pest control technician inspected the rental unit on August 18, 2016 he noted the following on the service report:

- “High activity level found in bedroom. Both mattress and box spring are heavily infested. Apartment cluttered but clean.”

On August 22, 2016 the technician returned to the rental unit to treat for bed bugs. He noted the following in service report:

- “High bed bug activity throughout bedroom. Hundreds of bed bugs and eggs on mattress, box springs, suitcases, hamper and underneath lamp. Living room and hall closets cluttered, clothing bundled in bed sheet and placed on living room floor. Low bed bug activity found within loose articles of clothing on floor as well as in bathroom. Resident may have bed bugs on his person.”
- Under the “warranty” section the technician wrote: “None – unit was too cluttered to heat many areas properly (especially bedroom and hall closet) and given high level of infestation there will likely be bugs in these items.”

On August 22, 2016 nearby units were inspected and one bed bug was found in the unit directly below the tenant's unit and treatment was recommended.

The landlord submitted that the tenant failed to report the return of bed bugs in a timely manner which resulted in a high level of infestation. The landlord was of the position that with such a high infestation the tenant must have seen and been aware of the bed bugs long before he finally reported it in August 2016 since there were bed bugs in multiple stages of their life span. The landlord pointed out that one tenant has already been lost due to the bed bug issue. In addition, the bed bugs keep returning to this unit which has caused the landlord to incur costs to repeatedly inspect and treat the rental unit and surrounding units. The landlord is of the position that should this tenancy continue the bed bugs will likely return and continue to be a problem which will cause the landlord to suffer further losses.

The tenant responded by stating that he does not understand how he is bringing bed bugs into the property or how the landlord can determine he is responsible for bringing them in. The tenant pointed out that he did report having bed bugs to the landlord but claimed that he was unaware of having bedbugs in the months prior August 2016. The tenant acknowledged that bed bugs are large enough that he is able to see them and that he had seen them on his bed in December 2015. The tenant explained that he does not react to bites from bed bugs but that he became aware of having bugs when his guest(s) slept over and the guest(s) were bitten and notified him of their bites. I heard that one of his guests reacted so badly to multiple bed bug bites that she had to seek medical attention. Prior to his guest(s) notifying him of their bites, the tenant claimed he did not see any signs of bed bugs and was not about to rip off baseboards to look for them. The tenant also submitted that he has a cleaning lady and she did not bring to his attention the sign of any bugs. The tenant suspects that the bed bugs are in the walls or in other units and are coming into his unit. The tenant does not know why the bed bugs arrived in his unit in large numbers in August 2016.

The landlord provided copies of the following documentation: the tenancy agreement; Notices of Rent Increases; invoices and service reports of a pest control company between the months of November 2015 and August 2016; an email written to the landlord by the pest control company on August 29, 2016 describing services provided to the rental unit with respect to bed bugs; a notice to end tenancy written by the tenant of the adjacent unit on December 7, 2015; and, the landlord's letter to the tenant on December 8, 2016.

The tenant did not provide any documentary or photographic evidence for this proceeding but was given the full opportunity to provide his position orally during the hearing.

The landlord requested an Order of Possession effective November 30, 2016 should the Notice be upheld so as to permit the tenant a reasonable amount of time to find alternative housing and vacate the rental unit.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Upon consideration of everything presented to me, I provide the following findings and reasons.

The issue for me to determine is whether the landlord has established that the tenant's actions or negligence have put the landlord's property at significant risk.

From the invoices, service reports and email from the pest control company that were provided as evidence by the landlord it is apparent to me that bed bugs are difficult and costly to treat since multiple inspections and treatments are often required and that bed bugs are very capable of travelling between rental units. Considering the residential property is a high-rise apartment building with many rental units I accept that the potential for an outbreak of bed bugs in the building would be a significant problem that the landlord would have to deal with at great expense. I further accept that allowing bed bugs to multiple to high numbers has a greater potential to migrate to other units, as seen in this case where the pest control company opined that the bed bugs migrated from the rental unit to the adjacent unit. Further, having a high number of bed bugs appears to have potential for bed bugs to be on a person or their clothing, as seen in the August 22, 2016 service report and I accept that in such cases there is potential for the bed bugs to be deposited in other areas of the building when the tenant or his guests move throughout the building as they come and go.

The tenant was put on notice, in writing, on December 8, 2015 that he must notify the landlord immediately of any signs of pests and the tenant acknowledged that he understood that he must report the signs of bed bugs. However, the parties were in dispute as to whether the tenant permitted the bed bugs to multiple to a large number before reporting it to the landlord in August 2016.

The tenant acknowledged that bed bugs are visible to the naked eye and that he is familiar with what they look like since he has seen them before in his unit. I find it likely that having hundreds of bed bugs is indicative of having bed bugs for quite some time and permitting them to multiply as submitted by the landlord, as opposed to the bed bugs crawling into the rental unit through a wall opening or some other crevice all at the same time, as suggested by the tenant. The email from the pest control company also supports the landlord's position and contradicts the tenant's theory as seen in the following statements: "We can say that there were no live bed bugs found in March and we can also say that the infestation has been there at least a few months as all stages of bed bugs were present." and "The bugs in [rental unit] did not come from the wall at that time or this time – they went into the wall from his apartment." Therefore, I find it likely that the tenant was aware that the bed bugs had returned for a considerable amount of time before he reported it to the landlord in August 2016 which I find to be negligent on part of the tenant.

In light of all of the above, I find the landlord has satisfied me that the tenant was negligent in not reporting bed bugs in a timely manner, which permitted the bed bugs to multiply to high levels and the negligence put the landlord's property at significant risk. Therefore, I uphold the Notice and I dismiss the tenant's application.

In keeping with section 55 of the Act, and as requested by the landlord's agent during the hearing, I provide the landlord with an Order of Possession with an effective date of November 30, 2016.

Conclusion

The 1 Month Notice has been upheld and the tenant's application is dismissed. The landlord has been provided an Order of Possession with an effective date of November 30, 2016.

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 18, 2016

Residential Tenancy Branch

