



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 in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”). The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

At the outset of the hearing the Landlord stated that a Witness may be attending the hearing. The Landlord was told to inform the hearing when this Witness appeared. During the hearing and while the Tenants were providing their evidence the Landlord was heard conversing with a person that the Landlord then identified as the Witness. After cautioning the Landlord in relation to the exclusion of a witness prior to providing its evidence, the Landlord stated that the Witness would not be called to give evidence.

During the hearing direction was given to the Landlord that evidence of events occurring after the issuance of the notice to end tenancy was not relevant to the substantiation of cause at the time the notice was issued. The Landlord was directed to focus on the provision of evidence leading up to the issuance of the notice. The Landlord became very upset with this direction, asked for the Arbitrator to repeat its name and stated that the name of the Arbitrator would be spread on social media in a negative fashion. The Landlord was strongly cautioned against making threats and disrespectful comments during the hearing that could lead to an exclusion from the hearing under the Rules of

Procedure. While the Landlord did not apologize for its behavior, the Landlord conducted itself appropriately thereafter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on October 6, 2012. Rent of \$865.00 is payable on the first day of each month.

On September 14, 2016 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") with an effective date of September 1, 2016. The reasons checked on the Notice are as follows:

- Tenant has allowed an unreasonable number of occupants in the unit;
- Tenant or a person permitted on the property by the tenant has
 - Seriously jeopardized the health or safety of another occupant of the landlord;
 - Put the landlord's property at significant risk; and
- Tenant has engaged in an illegal activity that has, or is likely to damage the landlord's property.

The Landlord states that upon realizing that an incorrect effective date had been set out on the Notice the Landlord served a second notice to end tenancy for cause to correct the effective date on the original Notice. The new effective date set out by the Landlord in the second notice is November 30, 2016. The Landlord states that they have no evidence of illegal activity and that they withdraw the first reason on the Notice: unreasonable number of occupants.

The Landlord states that the Tenants failed to report the presence of bedbugs in their unit causing the bugs to spread to the tenants in the adjoining unit. The Landlord states that on September 10, 11 or 12, 2016 the adjoining tenants reported the presence of bedbugs. The Landlord states that on September 13, 2016 the Tenant's unit was inspected and the Tenants reported that bugs were present and were being treated on the Tenant's on their own initiative. The Landlord states that they suspect the Tenants caused the infestation in their unit as there has been no previous infestation in the building.

The Landlord states that the health of the adjoining tenants' child has been seriously jeopardized as the child must be out of the unit for several hours while the chemical treatment for ridding the bugs is applied to their unit. The Landlord states that no other treatment without chemicals, such as heat treatment, has been considered by the Landlord.

The Landlord states that the failure of the Tenants to report the bugs placed the Landlord's building at significant risk of further infestation. The Landlord states that the pest control inspection notes activity in the Tenants' unit while the inspection in the adjoining tenants unit only notes light activity. The Landlord states that this indicates that the Tenants' unit was the source of the bedbugs. The Landlord states that the date the adjoining tenants first noticed the bugs is unknown. The Landlord states that since the adjoining unit no longer has bedbugs, the infestation must have been caused the by the Tenants. The Landlord states that preventative measures were previously being taken by the Landlord though the spraying of chemicals in the hallway. The Landlord states that no other units in the building are currently infested.

The Tenant states that bugs were found in the hallway carpet prior to July 2016 and were reported to the caretaker. The Tenant states that they did not know what the bugs were but the caretaker said he would take care of the problem and on July 20, 2016 the hallway carpets were professionally cleaned. The Tenants state that no maintenance of the carpets has occurred since.

The Tenants state that they noticed bugs in their unit in the beginning of September 2016 and that while they appeared similar to the bugs in the hallway, the bugs in the unit were a different size. The Tenant states that they did research and started to treat the unit by using the same chemicals as used by the pest control company. The Tenant states that they also used a steam mop on all the flooring. The Tenants state that they were never informed about the presence of bugs in the adjoining unit and were not informed that the Landlord had pest control in place.

The Tenant states that online information indicates that their building had a prior bedbug infestation in January 2015. The Tenant states that they did not cause any infestation in either their unit or the adjoining unit, that bedbugs can travel great distances and can be introduced by any variety of means, including a postal worker, and that bedbugs are not a health hazard. The Tenant states that they thought they were taking appropriate measures by treating the problem themselves and that they now know that they were wrong to do so. The Tenant states that they were trying to find alternate accommodation but that the Landlord keeps telling prospective landlords that the Tenants caused a bedbug infestation. The Tenant states that this is not only false but prevents the Tenants from finding any other home for themselves and their 4 children. The Tenants state that the Landlord has also presented the Tenants with a bill for all the work of the pest control company in the building.

The Landlord states that she cannot recall as far back as January 2015 about any infestation in the building. The Landlord states that she must tell other Landlords about the Tenants having bedbugs, even if the prospective landlord does not ask, because the Landlord does not lie and in order to protect other buildings and tenants.

Analysis

Section 53 of the Act provides that if a landlord gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed to comply. As the second notice was issued solely to correct the incorrect effective date

on the first Notice and as the Act operates to automatically correct a wrong effective date I find that the second notice was unnecessary for the purpose it was issued. As a result I find that the second notice is of no effect.

Section 47 of the Act provides that a landlord may end a tenancy if, inter alia, the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or has put the landlord's property at significant risk. As the Landlord's evidence is that the treatment chosen by the Landlord is the reason why the health of the adjoining tenant's child may be affected, I find that the Landlord has not substantiated that the Tenants are responsible for jeopardizing the child's health. There is no evidence that anyone else's safety or health has been affected.

Given the Landlord's evidence of preventative activity in the hallways, I accept the Tenant's evidence that bedbugs were discovered in the hallways before being detected or reported by any other tenants in their units. I do not consider the Landlord's vague evidence of no recall of any previous infestation to be credible and I accept the Tenant's evidence that there was a previous infestation in the building. I do not find any significant difference in the pest control company's description of the bedbug infestation in either unit or that such description is evidence that the Tenants' caused the infestation in the adjoining unit. For these reasons and considering that the reporting of bedbugs in each unit, whether by the Tenants or the pest control company, were within days of each other I find that the Landlord has not substantiated that the Tenants caused either their own infestation or the adjoining tenant's infestation by any act or negligence. As such I find that the Notice is not valid and that the Tenants are entitled to its cancellation. The Landlord remains at liberty to issue another notice to end tenancy for cause should events subsequent to the issuance of this cancelled Notice establish a reason to end the tenancy.

Going forward, I caution the Landlord against acting, saying or doing anything that may breach the Tenants' right to reasonable privacy under the Act.

Conclusion

The Notice is cancelled and of no effect. 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: November 18, 2016

Residential Tenancy Branch