



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, OPC

### Introduction

This was a cross-application hearing.

On October 26, 2016 the tenant applied to cancel a one month Notice to end tenancy for cause that was issued on October 21, 2016.

On October 31, 2016 the landlord applied requesting an order of possession based on the one month Notice to end tenancy for cause disputed by the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence.

### Preliminary Matters

Each party confirmed receipt of the hearing documents and evidence within acceptable time limits. The landlord and tenant each made a late evidence submission; despite late service that evidence was not disputed by the other.

### Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on October 21, 2016 be cancelled or must the landlord be issued an order of possession?

### Background and Evidence

The tenancy commenced in September 2007. Subsidized rent is \$475.00 payable on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The tenant resides in a bachelor unit; one of 36 units in an older building.

The parties acknowledge that the tenant has an acquired brain injury. The staff member present at the hearing only became aware of the injury several days prior to the hearing. The agent for the landlord has always had knowledge of the injury which causes the tenant short-term memory problems.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on November 30, 2016.

The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has:

- *seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and*
- *put the landlord's property at significant risk.*

The landlord stated that the Notice was issued based on problems related to the lack of preparation for pest control and the unclean condition of the tenants' rental unit.

The landlord held an information session on August 19, 2016 in order to introduce tenants to proper pest control preparation. All tenants were invited, the tenant did not attend. The tenant confirmed he was given a bed bug preparation sheet and instructions for pest treatment preparation for bed bugs and cockroaches. The tenant supplied a copy of the preparation instructions.

On August 18, 2016 all tenants were given notice of a pest inspection scheduled for September 2, 2016. The tenants' unit was inspected. On September 2, 2016 the landlord took photographs of the unit. Three photos taken that date were supplied as evidence, showing a dirty oven, a dirty shelf and crumbs in the stove tray below the oven.

The tenant was given written notice that a suite inspection would take place on September 9, 2016. The notice indicate that recent inspection established that the unit did not meet cleanliness standards of the landlord and that the suite must be cleaned.

On September 7, 2016 the tenant was given notice that the initial pest treatment would take place on September 16, 2016. The tenant was informed that his unit had cockroaches and bed bugs. The tenant was asked to clean the suite and to follow the pest control preparation instructions. The tenant was asked to pay special attention to the kitchen as the pest control technician note this as a major sanitation issue. The tenant was warned a failure to comply could result in eviction.

On September 19, 2016 the tenant was given written notice that the second pest treatment would take place on September 30, 2016. The tenant was informed that he

had not prepared for the initial treatment and he must ensure the suite was prepared and cleaned or the tenancy could end.

On October 5, 2016 the tenant was given written notice for treatment of a third pest control treatment on October 13, 2016. The tenant was again warned his unit had not been prepared as instructed and not cleaned. The tenant was informed this was a final warning and that failure to comply with preparation and cleaning could result in eviction.

The landlord supplied three photographs taken of the unit on October 13, 2016. Photos of a dirty light switch plate, a sink with several dishes in it and a dirty toilet were submitted as evidence.

The landlord supplied a document that provided comments relating to four dates of entry to the tenants' unit. The landlord said these comments were issued by the pest control company technician, as follows:

- September 2, 2016: *"bad CR issue, bad sanitation in kitchen, BB on mattress;"*
- September 16, 2016: *"Treated – No prep done – Mess!!;"*
- September 30, 2016: *"No change!!!;"*
- October 13, 2016: *"Small change-not much – Treated for CR."*

(Comments reproduced as written)

CR referred to cockroaches while BB references bed bugs.

On October 20, 2016 the tenant was issued another notice for pest control to take place on November 3, 2016. The next day the landlord issued the two month Notice ending tenancy for cause.

In response to my question regarding the alleged serious jeopardy, health, safety and risk the landlord responded that if a unit is not properly prepared it cannot be treated for pest. Pests are a problem in large buildings and cannot be contained if units are not prepared for treatment. As a result other tenants would be jeopardized. There was no cooperation on the part of the tenant. A significant risk exists as the pests can spread. The landlord stated the tenants' unit is in a state of disarray.

The tenants advocate cross-examined the landlord; with the landlord responding to a serious of questions.

The tenant supplied three photographs the tenant states were taken sometime between the first and second pest treatments. Those photos show a clean oven, a unit that appears to be in reasonable condition a new face plate on a wall, a clean kitchen sink and toilet. The landlord was asked how it was they believed photos submitted by the tenant were taken at the start of the tenancy and not recently; as suggested by the

landlord. The landlord said the tenants photos did not appear to be consistent with the current state of the unit.

The landlord confirmed that all units in the building were inspected and 10 required treatment. The landlord could not say if all units adjoining those with identified pest issues were also treated; as suggested by the advocate as a best practice. The landlord said 13 units were treated.

The landlord had submitted a photo of a dirty light switch plate and outlet face plates removed from the walls. The landlord confirmed that an error was made when the tenant was told he should not remove the face plates; as the tenant was required to do so as part of the pest control preparation. The issue for the landlord was "filth."

The landlord could not confirm when the last treatment for bed bugs occurred in the building. The landlord could not provide any detailed information regarding any continued presence of bed bugs in the building after October 13, 2016. The advocate suggested that at the time the Notice ending tenancy was issued there were no bed bugs. The landlord said that their point is that the tenant failed to properly prepare his unit.

When asked, the landlord could not explain what specific preparation was not completed by the tenant, but the pest control technician had said it was clearly not completed. The landlord said that the "no change" comments on the pest control record are understood by the landlord to mean that no preparation was completed. The landlord understands the wording used by the technicians and what the term "no change" is intended to convey.

The landlord was asked how dishes sitting in a sink would attract pests and how long those dishes were in the sink. The landlord could not say how long the dishes had been in the sink or how they posed a risk. The landlord said that a dirty toilet could attract flies. The advocate suggested the landlord believed that tenants should not be able to place dishes in a sink for a period of time.

The landlord said that when staff was in the rental unit on October 13, 2106 they would have taken pictures of only those areas that posed a risk. Staff did not photograph the whole unit. The landlord confirmed that by October 13, 2016 there was no evidence of any crumbs, a dirty shelf or dirty oven as shown in photos taken on September 2, 2016. The advocate suggested one could conclude that the photos taken in September were no longer representative of the state of the unit on October 13, 2016 when the second set of photos was taken.

The landlord responded that the tenant is breaching clause 7 of the tenancy agreement which requires the tenant to maintain health and cleanliness. The landlord confirmed that no orders have been issued by any health authority. The advocate responded that the landlord has not issued a Notice ending tenancy for breach of a term of the tenancy agreement.

The landlord confirmed that the tenant was not given any feedback on the attempts to prepare for pest treatment; the landlord is unable to do so for all tenants. The tenant was not given any written notice of deficiencies, outside of those reviewed during the hearing. The landlord said the tenant could have contacted them for additional information.

The landlord stated that, for the moment, the pest treatment has been successful.

The tenant stated that in preparation for treatment he put all of his furniture in the middle of the room. His clothes were placed in bags and put in the bathtub. The tenant said he did not know what else he could do. When staff entered the unit for the initial inspection and treatment they took photos but did not say anything to him. When the first treatment was completed the tenant did not know he was supposed to empty drawers. The second time the unit was treated the staff member told the tenant he liked what he saw.

The tenant said that on four occasions he had to prepare for treatment. A December 2, 2016 treatment that took place involved a pest technician placing some substance in the drawer, which took only moments. The staff then spent about five minutes taking pictures of the tenants unit. Pictures taken on December 2, 2016 were submitted as evidence, showing the toilet, bathroom sink and face plates removed from the walls.

The tenant said he knows almost everyone in the building and has talked to occupants who report cockroaches are widespread to almost every unit.

The advocate submitted that the landlords' evidence shows that as of October 21, 2016 the counter was cleaned, the toilet was not presenting a risk or attracting pests. There is no food or grease shown in the photos taken on October 13, 2016. The tenants' unit has been successfully treated for bed bugs. The landlord has not shown any cause to end the tenancy and has shown that they were able to treat and eliminate the bed bugs. The tenant has complied as best he can and those efforts were sufficient to allow treatment for bed bugs and elimination of bed bugs in the unit.

The landlord concluded stating they have been aggressive in attempts to eradicate bed bugs. The tenant does not cooperate and there is a major sanitation issue.

### Analysis

The landlord has issued a Notice ending tenancy, pursuant to section 47(d)(ii)(iii), which provides:

#### **Landlord's notice: cause**

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;*
- (b) the tenant is repeatedly late paying rent;*

*(c) there are an unreasonable number of occupants in a rental unit;*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

***(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or***

***(iii) put the landlord's property at significant risk...***

Pursuant to section 47(5) of the Act the tenant applied to cancel the Notice. The landlord then has the burden of proving the reasons given on the Notice.

From the evidence before me I must be convinced, on the balance of probabilities that the tenant has created conditions that meet the standard required to end the tenancy for the reasons given on the Notice.

From the evidence before me I find that the tenant has cooperated with pest control treatment, to the extent that the bed bug problem was under control at the time the Notice ending tenancy was issued. The landlord has confirmed that continues to be the case.

I found the pest control technician notes vague and of little use in establishing the level of preparation for treatment. In comparison, I found the tenants' testimony provided details on efforts the tenant made to move furniture and bag his clothes. If the efforts at preparation had been inadequate one would expect that any treatment would not succeed; that was not the case. Removal of the outlet face plates provide further evidence that the tenant was attempting to comply with the treatment preparations, as set out in the instructions given to the tenant. These facts leave me to conclude that the tenants' efforts at treatment preparation were not insufficient.

The landlord has confirmed that at the time the Notice ending tenancy was issued there was no evidence that any further bed bugs were located in the tenants' unit. There was no evidence before me that would support the presence of cockroaches as posing any health, safety, significant risk or threat to a lawful right.

The tenants' unit may not meet the standard of cleanliness expected by the landlord, but there was no evidence before me that the tenants' housekeeping efforts are so deficient as to provide cause to end the tenancy. I found the tenants' photographs convincing and have rejected the allegation the tenant took those photos in 2007. The photos appear to show a unit that has been lived in for some time with no signs of any significant issues. Further, there was no evidence of any inspection carried out by a health authority indicating a risk exists in the tenants' unit.

As a result I find on the balance of probabilities that the landlord has failed to prove the tenancy should end based on the reasons selected on the two month Notice ending tenancy for cause issued on October 21, 2016.

Therefore, I find that the Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

The landlords' application is dismissed.

### Conclusion

The landlords' application is dismissed.

The two month Notice to end tenancy for cause issued on October 21, 2016 is of no force and effect. The tenancy will continue.

This decision is final and 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: December 15, 2016

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Residential Tenancy Branch