



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and landlord's agent (the "landlord") attended the hearing. The landlord confirmed she is an agent of the landlord's company named in this application, and had authority to speak on its behalf. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Application Clarified

The parties testified that on December 30, 2016 the tenants provided written notice to end the tenancy effective January 31, 2017. Because the 1 Month Notice has an effective date of December 31, 2016 and the tenants do not plan to vacate until January 31, 2017, the tenants still seek to cancel the 1 Month Notice. The tenants clarified that the repair and compliance orders they initially sought were in relation to bedbugs and this issue has been resolved. Consequently, the tenants withdraw these portions of their

claim and only seek to cancel the 1 Month Notice and monetary compensation for damage or loss under the *Act, Regulation* or tenancy agreement.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on September 1, 2014 on a fixed term until February 28, 2015 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,392.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$660.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

On November 10, 2016 the tenants notified the landlord that they had bedbugs. An inspection was conducted by the landlord and a pest control company representative on November 15, 2016.

The tenants acknowledged receipt of the landlord's 1 Month Notice dated November 16, 2016 by way of posting to the rental unit door. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord
- the 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
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

In the details for cause section of the 1 Month Notice, the landlord indicted that the tenants withheld the information they had bedbugs for many months and only disclosed when the infestation was out of control.

The tenants obtained and paid for a separate inspection by a pest control company on November 18, 2016. This same day, the tenants were advised in writing that their laundry privileges were suspended as a result of the bed bug infestation. The rental unit and adjacent rental unit were heat treated for bed bugs on November 30, 2016 and a follow up treatment was conducted on December 16, 2016. The tenants regained their laundry privileges at this time.

Tenants' Claims

The tenants seek to have the 1 Month Notice set aside until such time that they vacate on January 31, 2017. The tenants testified that they notified the landlord immediately upon discovery of the bedbugs in their unit and did not engage in any actions that would bring bedbugs into their unit. The tenants testified that the building and the unit adjacent to theirs has a history of bedbug infestation. The tenants testified that in August of 2014 despite the building outbreak of bedbugs, their unit was inspected and showed no signs of bedbugs. In January of 2015 the tenants unit was again inspected and showed no signs of bedbugs.

After receiving their 1 Month Notice the tenants spoke to the occupant of the unit adjacent to them. The tenants submitted this conversation as part of their evidence package. In this recording the occupant acknowledged that he had the original bedbug infestation in August of 2014 and another bedbug infestation in August of 2016. Both instances were reported to the landlord and treated. The occupant stated that he received notice to end tenancy for the latest infestation.

It is the tenants' position that because the landlord failed to notify them of the adjacent unit August 2016 infestation or have their unit inspected for bedbugs as they did in previous outbreaks, the landlord was negligent. The tenants testified that it is likely the bedbugs in their unit stem from earlier infestations of the adjacent unit due to negligence on the part of the landlord.

The tenants seek monetary compensation in the amount of \$1,948.75. Specifically, the tenants seek \$50.00 in estimated laundry costs, \$100.00 in medical expenses, \$78.75 for the pest control inspection, \$200.00 in lost wages, \$20.00 in parking and gas to Residential Tenancy Branch and the \$100.00 filing fee. The tenants also seek

compensation for the partial loss of use of their rental unit in the amount of \$1,400.00, an amount equivalent to one month's rent.

Landlord Reply

In reply, the landlord testified that according to the pest control inspection the infestation was major. Further she testified that the landlord did not bring the bedbugs into the rental unit and therefore should not be liable for any monetary claims made by the tenants. The landlord acknowledged the building and adjacent rental unit had bedbug infestations in previous years with the adjacent unit having had three infestations in the last year.

Analysis

1 Month Notice

Under section 47 of the *Act*, a landlord may end a tenancy if;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord
- the 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
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of emails, invoices and oral testimony regarding the bedbugs in the rental unit.

While it is the landlord's position that the tenants withheld notification of the bed bug infestation; the documentary evidence submitted by the landlord does not support this. The emails and invoices confirm a bedbug infestation but do not indicate a timeline of when this infestation began. In order to meet the grounds of the 1 Month Notice the landlord must first, establish the tenants are responsible for the bedbug infestation and second, establish the effects of the infestation on other occupants, the landlord and the property.

I find that the evidence does not support a finding that the tenants are responsible for transferring bedbugs into the rental unit. As is often the case, the actual source of the bedbugs is impossible to identify. For this reason, I find the landlord has failed to meet its burden and therefore set aside the 1 Month Notice. The tenancy continues until it is ended in accordance with the *Act*.

Compensation

The tenants claim for compensation is based on their contention that the rental unit became infested with bedbugs due to negligence of the landlord. The tenants have claimed for out of pocket expenses as well as amounts for loss of quiet enjoyment of the rental unit. The landlord may have a positive obligation to treat bedbugs when they are discovered so as to prevent their multiplication and transmission to other units, but the obligation to treat does not amount to a finding of fault or liability to compensate a tenant without proof that the landlord has been negligent in dealing with the problem or in failing to treat an existing infestation after becoming aware of it.

Based on the evidence, I find that the landlord responded diligently and appropriately after each described report of bedbugs. The evidence does not establish that the bedbugs traveled from the adjacent unit into the rental unit. Although the tenants contend the landlord was negligent by failing to notify and inspect the tenants unit following the discovery of the adjacent unit's infestation in August of 2016, I am satisfied the landlord fulfilled its obligation by treating the existing infestation and this omission does not constitute negligence.

In the absence of evidence to establish fault on the part of the landlord, there is no basis for the tenants' claim for compensation for their out of pocket expenses. With respect to the claim for loss of quiet enjoyment, the tenants' actual loss of use does not justify an award of compensation for loss of quiet enjoyment and there is no basis for an award that amounts to a refund of one month's worth of rent. The tenants' claims are denied.

As the tenants were not entirely successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenants' application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

The tenants' claim for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

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: January 04, 2017

Residential Tenancy Branch