



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

[Tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for January 31, 2017. I had allowed the tenant's adjournment application as the tenant was in the hospital and unable to attend.

The adjournment decision dated February 2, 2017 noted the requirements for service of the hearing package and evidence. The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant also acknowledged receipt of the landlord's evidence for this hearing, and was ready to proceed.

This hearing dealt with the tenant's 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, and authorization to recover his filing fee for this application from the landlord pursuant to section 72. The landlord's agent, LE ('landlord'), appeared on behalf of the landlord in this hearing, and was given full authority to do so. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord gave undisputed sworn testimony that the 1 Month Notice, with a corrected effective date of January 31, 2017, was served to the tenant on December 23, 2016 by posting it to the tenant's door. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issues

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on April 1, 2015 with monthly rent currently set at \$643.12, payable on the first of each month. The landlord currently holds a security deposit of \$312.50.

The landlord testified in the hearing that they had issued the notice to end tenancy on December 23, 2016 providing two grounds:

1. 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; and
2. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

Neither party had submitted a copy of the 1 Month Notice for this hearing. The landlord testified that the tenant had put the property at risk, and continues to do so, as the tenant had been denying adequate access to the landlord in order to treat the bed bugs in his rental unit.

The landlord provided the following reasons to support the belief that the tenant is a risk to the property, and has seriously jeopardized the health, safety, and lawful right of the other occupants and the landlord. The landlord testified that on December 22, 2016 the tenant would not comply with the landlord's notice to prepare the unit for bed bug treatment. The tenant stated that he was ill, and the landlord accommodated the tenant by postponing the treatment to two days later. On December 22, 2016, the rescheduled treatment date, the landlord had to be accompanied by the police as the tenant had refused the landlord access to the unit. The 1 Month Notice was issued the following day on December 23, 2016. The tenant eventually complied on January 12 and 30, 2017 by allowing the landlord access to treat his unit for bed bugs on these two occasions. The landlord testified that the tenant did comply on January 30, 2017, which was the second spray treatment, but the police were in attendance.

LM, the landlord's witness, provided sworn testimony that the tenant was swearing at the pest control person on December 20 and 22, 2016, and that he would not allow anyone access to his unit. She testified that the tenant's behaviour had made the bed bug treatment process a very lengthy and costly one for the landlord as the tenant was extremely resistant.

The tenant disputed the landlord's testimony that he was noncompliant, stating that he was the one who had notified the landlord of the bed bugs in his unit. The tenant had sent emails notifying the landlord that he was very ill. The tenant stated that he had an ulcer on his leg that made it physically difficult to move any furniture for the treatment.

The tenant testified that he was not made aware in advance of the treatment that the treatment would require moving the furniture in his suite, and that the notice issued to him did not make any mention of this requirement. The tenant testified that the treatment had to be postponed as he had to hire a mover, and he had requested a new date to accommodate this. He testified that he had discussed with the landlord his medical issues, and he had even paid for the mover himself. The tenant obtained a doctor's note, dated January 11, 2017, which stated that "the patient is physically incapable of moving furniture out of his domicile for at least two months". The doctor's note was included in the landlord's evidence package.

The tenant testified that on December 20, 2016 he was suffering from an extreme bladder infection, which he was eventually hospitalized for. The tenant testified that he was not in a good physical state, but he did eventually comply with the landlord's requests for treatment once he was better. He testified that once he was discharged from the hospital that he had disposed of his mattress as suggested by the treatment company. He stated that the receipt from the treatment company only confirmed that treatment took place, and not the existence of bed bugs in his unit. He testified that he had also purchased a steam cleaner so he could self-treat any bed bug bugs that he might find.

The tenant's advocate provided testimony for this hearing, stating that the tenant was extremely frustrated, which was outwardly expressed towards the landlord and the landlord's agents. The tenant was concerned that not all units were treated at the same time, and that there were no prior reports before the treatment confirming the existence of bed bugs in his unit. The tenant's advocate submitted that the tenant's willingness hire a mover shows the tenant's good faith, and his willingness to comply.

The landlord replied that regardless of the reasons, the tenant had still yelled at the management, refused access, and the police were required to attend. The landlord submitted that this behaviour was not considered normal, and that no evidence was required to justify the bed bug treatment as the identification and treatment were done at the same time. The landlord's witness, LM, testified that the landlord did not receive the doctor's note from the tenant until the day before treatment was to happen, and that no notice was required for the movement of furniture as it is assumed that the treatment company would require access to the walls and baseboards. She stated that a disclaimer was included in the prep sheet provided to the tenant. This prep sheet was not included in the landlord's written evidence. The landlord also stated that the tenant should have disposed of his mattress much earlier.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

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

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

5(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.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on January 2, 2017, seven days after considered deemed served with the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy.

I have considered the concerns brought up by the landlord, as well as the evidence and witness testimony that was provided to support the landlord's reasons for ending this tenancy. I had also considered the testimony of the tenant, and of his advocate. Although the tenant may have caused the landlord much hardship and inconvenience, the burden is on the landlord to demonstrate how the tenant had significantly put the landlord's property at risk, or seriously jeopardized the health and safety of the landlord, or other occupants. The tenant disputed the landlord's submissions that he was noncompliant, and provided reasons for why the bed bug treatment was delayed.

I accept the testimony provided by the tenant and his advocate, which addressed the issues brought up by the landlord. I considered the undisputed facts before me, primarily that the tenant was extremely ill, and eventually had to be hospitalized. It is undisputed that the original hearing scheduled for January 31, 2017 had to be

adjourned due to the tenant being hospitalized. The tenant had provided the landlord with a doctor's note stating that he was physically incapable of moving furniture, and the tenant had hired his own mover to accommodate the landlord for the treatment. The tenant eventually provided access to the landlord to treat his unit on two subsequent occasions, and disposed of his mattress as soon as he was discharged from the hospital and was able to.

Although the landlord had expressed much frustration and concern over the ability to obtain access to the tenant's suite for bed bug removal, the landlord did not demonstrate how the tenant had put the landlord's property at significant risk, especially to a degree that is serious enough to warrant terminating this tenancy. The bed bugs were treated, and the landlords did not indicate how the tenant's behaviour posed a significant risk to the landlord's property. No reports from the pest control company or witness testimony were provided by the landlord to support this, except for the service receipt for the treatment. I also find that ending the tenancy on this ground would be unjustified considering that the landlord did not provide the tenant with any official warning that the tenant's behaviour would be grounds for ending this tenancy.

I find that the tenant suffers from serious medical issues which, unfortunately, had caused the landlord and the landlord's agents much inconvenience and frustration. I do not, however, find that the incidents brought up in this hearing, or the tenant's medical conditions, are significant enough to justify ending this tenancy. More specifically, I find the landlord did not provide sufficient evidence to demonstrate how the tenant posed a significant risk to the landlord's property.

I note that the landlord did have to make multiple attempts to treat the tenant's suite for bedbugs, but as stated above, I accept that the tenant suffered from medical issues serious enough to require hospitalization. I also have concerns over whether it was properly communicated to the tenant by the landlord that the tenant's behaviour would result in a 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

As the tenant was successful in his application, I am allowing the tenant to recover the cost of the filing fee for this application.

Conclusion

I allow the tenant's application, and the 1 Month Notice is cancelled. The 1 Month Notice dated December 23, 2016 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 22, 2017

Residential Tenancy Branch