



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maple Place Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for cause.

Both tenants and an agent for the landlord attended the hearing, and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give closing submissions.

The hearing did not conclude on the first scheduled date and was adjourned to continue and to give the parties a further opportunity to settle this dispute. My Interim Decision was provided to the parties. The dispute did not settle, and all evidence and testimony provided has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the tenants be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on December 17, 2003 and reverted to a month-to-month tenancy after the first year, and the tenants still reside in the rental unit. Rent in the amount of \$885.00 per month is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$347.50 which is still

held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment within a complex containing 48 units, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenants were served with a One Month Notice to End Tenancy for Cause by another agent of the landlord who posted it to the door of the rental unit on March 23, 2017. A copy has been provided and it is dated March 23, 2017 and contains an effective date of vacancy of April 30, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety of another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

The landlord's agent testified that the checkmark beside "Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property" is incorrect, and no illegal activity is alleged.

The rental unit above the tenants had been treated for bed-bugs and new tenants moved in. They found a bed-bug after several treatments.

The landlord further testified that an inspection was completed by Pest Control personnel on September 13, 2016, which detected no bed-bugs in the rental unit, but a lot of activity was located in the above unit, heavy activity in another unit below, and light activity in a rental unit on the same floor as this rental unit. A copy of the invoice has been provided. The landlord served the tenants with a notice on September 14, 2016 stating that the tenant had been issued a notice to inspect for bedbugs but the tenants were not ready; someone was in the bed. It states that another inspection would be scheduled and it was mandatory for the tenants to prepare by vacuuming the entire suite, including baseboards, furniture and beds.

Another invoice from the Pest Control company has been provided for this hearing, dated September 20, 2016 and states that no bugs were found. A follow-up notice was provided to the tenants stating no pests had been located, but the tenants should clean up and to report the detection of any pests immediately.

The landlord served the tenants with another notice dated October 12, 2016 stating that at least 1 bed-bug treatment would be scheduled to help stop an infestation, and suggests that the tenants start the clean-up, and asking the tenants to vacuum around all baseboards before the spraying commences.

The tenants were given a Notice of Pesticide Use, prior to October 21, 2016 stating that the application would take place on October 21st, and giving a list of things the tenants had to do to prepare. It also states in hand-writing, "You must be ready; do highlighted areas." The landlord's agent testified that the highlighted areas on the copy given to the tenants were the first 3 items:

- **Remove all bed linen** – Put in bags and transfer to laundry room. Discard the bag in outside garbage container.
- **Wash and dry laundry on a hot cycle.** Once items are laundered, place in a **new bag** and leave them bagged until after the treatment.
- **Remove all loose items from the floor area. Do not pile items.** Move furniture 3 feet away from the walls and clear out the floor area of closets. Vacuum or mop floor surfaces in advance. Vacuuming is essential between treatments. Focus on mattress, box spring, edges and all floor surfaces.

Also provided is a copy of the Pest Control invoice which states that "some edges not accessible."

The landlord's witness testified that she served the One Month Notice to End Tenancy for Cause on March 23, 2017 by posting it to the door of the rental unit along with a letter.

The landlord completes suite inspections annually, and the witness was in the rental unit in October, 2016 with another employee of the landlord. The rental unit was very atrocious, and quite damaged. A person can hardly move in there, and it is not very clean or accessible for repairs. The landlord sent a letter to the tenants saying that the rental unit needed cleaning, and there would be another inspection scheduled. Another inspection was completed and the cleaning wasn't done; clutter and garbage had not been cleaned up. The tenants started cleaning up a few weeks ago. The rental unit needs complete renovations.

The first tenant (TDC) testified that the tenants have resided in the rental unit for many years, and are on a disability pension. The tenant has vacuumed and cleaned, and is willing to do whatever it takes to continue the tenancy. The tenant borrowed \$500.00 and worked hard to try to get the rubbish removed.

The second tenant (WDC) testified that the tenants cannot afford to move out.

The landlord's agent is exaggerating; there are no bed-bugs and the tenant has never seen one. The landlord has been saying since September that they want to renovate and that's why the landlord wants the tenants to move out.

The tenant's son helped put stuff in a garbage can, and the tenants will get the carpets professionally steam cleaned. The tenant does not understand what the landlord expects.

With respect to more time than prescribed to dispute the notice, the tenant testified that she getting treatment a nervous break-down. The tenants have also provided a copy of a note from a physician which states that the tenants were not able to appear within time, and that they should be granted leniency to be able to appeal the eviction.

Closing Submissions of the landlord's agent:

The pest control personnel went to the rental unit to inspect and found bed-bugs. A treatment was scheduled for March 29, 2017, but the pest control personnel could not do preventative treatment because the rental unit is packed with garbage and clutter. The landlord needs to remove carpets and baseboards to do an entire treatment. At this point, the rental unit has only been partially treated, done on September 13, 2016. The tenants have been given numerous notices of what to do to be ready for treatment, as well as notices to inspect on March 22, 2016; September 9, 2016; and September 20, 2016.

Closing Submissions of the tenants:

The tenants are trying to comply but are not certain what the landlord expects. The landlords are wonderful, and the tenants work hard to maintain the tenancy.

Analysis

Firstly, I accept the documentation provided by the tenant's physician and the tenant's testimony regarding treatment. The landlord's witness testified that the notice to end the tenancy was served by posting it to the door of the rental unit on March 23, 2017 which is deemed to have been served 3 days later, or March 26, 2017. The time limit for disputing such a notice is 10 days, which would expire on April 5, 2017, and the tenants filed the application for dispute resolution on April 18, 2017. Given the opinion of the physician, I hereby grant the additional 13 days for the tenants' application to be considered.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The landlord's agent testified that "illegal activity" was checked off in error, and the remaining reason for issuing it is in dispute.

I have reviewed the evidentiary material of the landlord, however a lot of it, and the testimony of the landlord's agent, refers to incidents that took place after the One Month

Notice to End Tenancy for Cause was served. The onus is on the landlord to establish that the landlord had cause to issue it, not to substantiate more recent events.

The landlord served the tenants with a notice on September 14, 2016 stating that the tenants had been issued a notice to inspect for bedbugs but the tenants were not ready; someone was in the bed. It states that another inspection would be scheduled and it was mandatory for the tenants to prepare by vacuuming the entire suite, including baseboards, furniture and beds.

Another notice was given to the tenants on September 21, 2016 which confirmed there were no bed-bugs.

The landlord has provided a list of activities for the tenants to perform to prepare for a treatment to take place on October 21, 2016. The landlord's agent testified that the tenants were told to do the activities that were highlighted on the form, and testified that those were removing bed linen, washing laundry, and removing loose items from the floor area.

I accept that the landlord has an obligation to deal with any possibility of an infestation within the rental complex, but I am not satisfied that the landlord has done what is reasonable to ensure the tenants knew exactly what the landlord expected. The notices are contradictory to the October 21, 2016 list of activities. The invoices of the pest control personnel indicate heavy bed-bug activity in other units, but none in this rental unit. In the circumstances, I am not satisfied that the landlord has established that the tenants have seriously jeopardized the health or safety of another occupant or the landlord causing the landlord to issue the notice to end the tenancy.

I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues. If the tenants fail to follow instructions given in writing by the landlord that are clear and unambiguous, the landlord will be at liberty to issue another notice to end the tenancy.

The landlord has also provided evidentiary material between the first and second scheduled dates of this hearing stating, in a nutshell, that the tenants have completed a lot of work in the rental unit but more still needs to be done.

The *Residential Tenancy Act* requires a tenant to maintain the rental unit:

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I order the tenants to comply with Section 32 of the *Residential Tenancy Act* as set out above.

Conclusion

For the reasons set out above, the tenants' application for more time than prescribed to dispute a notice to end the tenancy is hereby allowed.

The One Month Notice to End Tenancy for Cause dated March 23, 2017 is hereby cancelled and the tenancy continues.

I hereby order the tenants to comply with Section 32 of the *Residential Tenancy Act* as set out above.

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: June 08, 2017

Residential Tenancy Branch