



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, O, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 30, 2017.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on May 30, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served by mailing, by registered mail on the Landlord as the landlord acknowledged receipt of these documents. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 30, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began in April 1, 2005. The present rent is \$667.65 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$284.73.

### Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- 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
  - put the landlord's property at significant risk

The landlord gave the following evidence:

- On May 17, 2017 the adjacent unit reported a bedbug in the rental unit.
- The landlord gave the Tenant a written notice that stated they needed access to the tenant's rental unit on May 24, 2017 "TO CARRY OUT PEST CONTROL-BEDGUG ADJACENT TREATMENT (PLEASE CLEAR THE AREA AROUND THE BED AND STRIP OFF THE BEED SHEET. PULL OUT FURNITURE AT ELAST 2 FEET AWAY FROM THE WALL...."
- The report from the pest control company indicates the Bedbug Adjacent treatment was done – "SPRAY – HEAVY - REMOVE BOX SPRING"
- On May 24, 2017 the landlord's pest control company e-mailed the landlord stating they did a treatment on the adjacent unit and on other units including the tenants. The report states the tenant's unit had a heavy infestation of bedbugs. The adjacent unit had a minor infestation. Another unit had a moderate infestation.
- On May 29, 2017 a K9 assisted inspection was completed. The e-mail from the company states "Live bugs on the mattress as well as on both couches in the living room. This unit needs treatment. Bed bug proof mattress and box spring encasements need t be put in place in order for the treatment to be effective." The report indicates another unit had a treatment 1-2 months ago and that other units could not be tested by the K9 because it had been recently treated.
- On May 30, 2017 the landlord gave the tenant written notice they would have to schedule his suite for full bedbug treatment and that they had no choice but to issue a 30 days notice to end tenancy because of the tenant's failure to promptly report any unsafe condition to the rental unit.
- The landlord served a one month Notice to End Tenancy on the Tenant on May 30, 2017.
- The landlord gave the Tenant written notice that the pest control company would carry out a treatment on June 8, 2017.
- The report from the pest control company states the treatment was completed on June 8, 2017 and "partially prepared, laundry not completed, bedroom furniture not emptied, dispose box spring follow up necessary."
- The pest control company did another treatment on July 5, 2017. The report states the suite was prepared and "Sprayed cracks/crevices. Tenant needs to buy covers for mattress and box spring."
- The landlord testified they purchased the building 2 years ago and they take the bedbug problem seriously. They submit there are grounds for termination because the tenant

failed to report the presence of bedbug problem to management and the tenant failed to co-operate with the landlord.

The tenant disputes much of the evidence given by the landlord. He testified as follows:

- He has lived in the rental unit for 12 years and has never had a bedbug problem.
- His unit has never been previously treated.
- An inspection has conducted last year and no bedbugs were discovered.
- He was not aware of bedbugs in his unit.
- He disagrees that he failed to co-operate with the landlord. H admits that inadvertently left some belongings in a dresser.
- He vacuumed prior to the treatment and moved his furniture.
- The landlord wants to make him a scapegoat.
- The landlord is going through the process of renovating units. If they can evict him they will be able to re-rent the rental unit at a significantly higher rent.

Analysis:

This is a difficult. On one hand one can empathize with the landlord's concerns about the presence of bedbugs and the need to treat it expeditiously.

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities. The arbitrator must determine whether the landlord has presented sufficient proof to end the tenancy as of the date the Notice to End Tenancy was served. After carefully considering all of the evidence I determined the landlord failed to present sufficient evidence to establish caused for the following reasons:

- There is insufficient evidence to establish that the Tenant brought the bedbugs into the building. He has lived in this unit for 12 years. He testified an inspection was done a year ago and there was not evidence of bedbugs. The landlord testified there records indicate an inspection was done in December 2015. There is evidence from the pest control company that bedbugs were found and treated in adjoining units over the last couple of months.
- The written Notice given by the landlord to the Tenant which accompanied the one month Notice states the landlord was ending the tenancy because the Tenant was negligent in failing to report the problem to the landlord. The tenant testified he was not aware of the presence of the bedbugs. I determined the landlord failed to prove the tenant was aware of the bedbug problem or should have been aware. I do not accept the submission of the landlord that the tenant's failure to report a hazard that he is not aware of gives the landlord grounds to end the tenancy.
- The landlord further submits there are grounds to end the tenancy because the tenant failed to co-operate in the treatment of the problem. I determine the landlord failed to prove this allegation for the following reasons:

- Representatives from the pest control company did not attend the hearing and hearing. The landlord relies on the reports given by the pest control company.
- The representatives of the landlord did not testify they personally saw the tenants unit.
- The reports given by the pest control company indicate that the unit was partially prepared for the June 8, 2017 treatment and prepared for the July 5, 2017 treatment. It appears the pest control company proceeded with the treatment on June 8, 2017.
- I determined the landlord failed to establish there is grounds to end the tenancy on the basis that the tenant failed to completely empty his bedroom furniture and failed to complete his laundry.
- In any event, these matters deal with allegations that occurred after the issuance of the Notice to End Tenancy on May 30, 2017 and are not relevant to whether there were grounds to end the tenancy on May 30, 2017.

Determination and Orders:

As a result I ordered that the Notice to End Tenancy dated May 30, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful I ordered that landlord pay to the Tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent..

**This decision is final and binding on the parties.**

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.

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Dated: July 20, 2017

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Residential Tenancy Branch