



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

At the outset of the hearing I confirmed that both parties had exchanged their respective hearing documents upon each other and that both parties had an opportunity to review and prepare a response to the documentation. I also explained the hearing process to all parties and gave the parties the opportunity to ask questions.

The tenant is a senior with disabilities including those associated with brain injury. The tenant was assisted by an Advocate and a social worker during the hearing. The social worker was also provided witness testimony during the hearing.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy be cancelled or upheld?

Background and Evidence

The tenancy started on October 1, 2009 and the tenant is currently required to pay rent of \$360.00 on the first day of every month. The rental unit was described as a bachelor style apartment in an 84 unit building operated by a society that provides housing for seniors.

The tenant was served with the 1 Month Notice to End Tenancy for Cause ("the Notice") in person on June 12, 2017. The Notice has a stated effective date of July 31, 2017 and the stated reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - Put the landlord's property at significant risk.

In the "Details of Cause" box on the Notice the landlord wrote:

"Tenant has not met the terms of the agreement as a result of negotiations with a mediator Re: Notice to end tenancy issued Feb 28/17. Landlord agreed to withdraw petition on the basis the tenant would make every effort to work with supports to clean & downsize the apartment so that it might be effectively treated for bedbugs. The tenant has made only a cursory effort and after 3 mos is still not ready to be treated effectively putting all the neighbours and the entire property at risk for bedbugs."

Landlord's reasons for ending tenancy

The landlord provided a considerable amount of written submissions, documentary and photographic evidence, an oral submissions; however, with a view to brevity I have only summarized the landlord's position below.

In 2015 bedbugs were found in the rental unit. The tenant had untreatable items in the rental unit (primarily a wagon wheel and saddle) and the tenant was required to remove those items from the rental unit and keep them in an alternative location so as to not reintroduce bedbugs to the rental unit. This was communicated to the tenant orally by the Building Superintendent.

In October 2016 bedbugs were found in the hallway and an investigation resulted in the discovery of a bed bug infestation in the rental unit. The wagon wheel and saddle were

also found to be back in the rental unit. The landlord provided evidence that bedbugs may live up to 18 months without feeding, suggesting the bedbugs may have been reintroduced when the saddle and wagon wheel were returned to the rental unit.

In the months that followed the landlord tried working with the tenant to have the rental unit effectively prepared for bedbug treatment by cleaning and decluttering and removing the saddle and wagon wheel but the tenant was uncooperative. The landlord had the rental unit sprayed for bedbugs once a month in an effort to control the spread of bedbugs but without adequate preparation the spraying was not effective in eradicating the bedbugs. Given the lack of adequate preparation and the tenant's unwillingness to co-operative with the landlord's instructions for preparation, the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant on February 28, 2017. After serving the tenant with the 1 Month Notice dated February 28, 2017 the landlord was approached by an Advocate acting on behalf of the tenant. A meeting was held and during that meeting the tenant promised his full cooperation with bedbug treatment preparation and the Advocate and the tenant's social worker would arrange for supports to assist the tenant in preparing the unit with a view to effectively treating the unit at the end of March 2017. Based on the agreement, the landlord agreed to withdraw the 1 Month Notice dated February 28, 2017. The agreement was reflected in a letter by the landlord on March 21, 2017 and given to the tenant and his Advocate.

The landlord's exterminator continued to spray the rental unit monthly in an effort to control the spread of bedbugs. In addition, adjacent rental units and the hallway were sprayed; however, the exterminator advised the landlord that the treatments would not be effective since the rental unit was still not sufficiently prepared for an effective treatment in March, April or May 2017.

The tenant's mattress was found to be infested with bedbugs and the landlord assisted in disposing of it and finding a replacement mattress for the tenant, complete with a mattress encasement. A subsequent inspection by the landlord's staff found the replacement mattress was infested with bedbugs and the mattress encasement was torn.

The landlord has also undertaken the task of heat treating the tenant's possessions; however, this is labour intensive for the landlord's staff and if the bedbugs are not eradicated from the rental unit the tenant's possession will become reinvested.

The landlord acknowledged that some progress was made by the tenant in downsizing the contents of the rental unit, including removal of the saddle and wagon wheel;

however, the tenant has not sufficiently cleaned the unit. The carpeting requires a thorough cleaning, surfaces need to be dusted, and wall hangings taken down as bedbugs live in paper products and dust inhibits effective treatment. The landlord acknowledged that it appears that the tenant vacuumed or shampooed the traffic area of the carpet but not the entire carpeted area; the surfaces remained dusty despite advising the tenant he needed to dust; and, wall hangings were not taken off the walls. The landlord provided copies of many notes taken by the landlord's agents following the inspections.

The landlord pointed out that it is the landlord's mission to provide housing to seniors and the landlord is of the position it has taken made great efforts to aid in the effective treatment of the rental unit. However the monthly spraying costs; labour intensive heat treatment; and the time and effort spent inspecting and assisting the tenant prepare for treatment has been draining on the landlord's limited resources. Further, the occupants of the other rental units are negatively impacted by bedbug treatments and there is concern for other residents who may suffer from bedbug bites should the bedbugs spread to other units.

Tenant's position

The tenant acknowledged that when the previous 1 Month Notice was withdrawn he was expected to perform certain tasks including: cleaning the rental unit; doing his laundry; cleaning the rug; and, permitting periodic bedbug spray treatments. The tenant stated that he accomplished these tasks including the rug cleaning. The tenant stated that he rented a rug cleaning machine.

The tenant acknowledged that he brought the wagon wheel and saddle back into the rental unit and he should not have. When he realized this he had his son take them away and store them.

In May 2017 a person who specializes in decluttering and organizing was brought in to help the tenant decide which possessions to keep and throw away and many items were thrown out. The social worker continued to help the tenant remove possessions from the rental unit. The tenant has removed a considerable amount of possessions, including clothes, paperwork and a filing cabinet; but, acknowledged some more removal may be required for further fumigating efforts. Other clothes and paperwork the tenant wants to keep have been placed in plastic bins, as required, for heat treatment. The tenant agrees to keep cooperating with the landlord's requests with respect to preparing the unit for treatment.

The tenant confirmed that monthly bed bug spray treatments have taken place and the tenant stated that he has not seen a bed bug in the last two weeks so he is of the opinion they have been eradicated.

The social worker stated the rug shampoo was done to the tenant's best ability and that it was done quite well. The social worker does not know what else the tenant can do to prepare for treatments. When the social worker last saw the unit on June 2, 2017 the unit appeared ready for a treatment. The social worker was of the opinion that a full treatment took place in early June 2017.

The tenant's Advocate stated that a few treatments are often necessary to eradicate bedbugs.

Landlord's rebuttal

The landlord acknowledged that there was improvement after the person came in to assist the tenant in decluttering and the landlord's agent were hopeful that this person would return to continue the effort but that did not happen.

Every time the landlord inspected the unit the landlord's agent would point out areas that required additional cleaning or decluttering but during subsequent inspections the areas remained uncleaned.

The stated that the June 2, 2017 spraying was not a fully effective treatment as the unit was still not sufficiently prepared. Rather, the spraying was done to control the spread of bedbugs as done in prior months.

The landlord stated that the tenant's statement that he has not seen bed bugs in two weeks is unreliable since he also stated he had not seen bedbugs when his replacement mattress was found to be infested. The landlord stated that glue strips are left in the rental unit to see if bed bug activity continues and bed bugs were found on the glue strip.

Tenant's argument

The tenant's Advocate argued that the bar for evicting the tenant has not been met and that often multiple sprayings or treatments are necessary to eradicate bedbugs from a unit. Also, the tenant has disabilities and he has done the best to his abilities.

The social worker acknowledged that the wall hangings may not have been removed by the tenant but suggested it would have only taken a few minutes to take them down had the landlord helped the tenant do that.

Order of Possession

Should the Notice to End Tenancy be upheld the landlord requested an Order of Possession effective as soon as possible so that the rental unit may be effectively treated for bedbugs. The tenant's Advocate requested that the tenant be permitted occupancy until September 30, 2017 in recognition of the difficulty it will be for the tenant to move considering he is a senior with disabilities.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where there are multiple reasons indicated on a Notice to End Tenancy, a tenancy may be ended where one reason has been proven.

Bedbugs are not an uncommon occurrence in residential properties and landlords are generally expected to provide pest control services under a landlord's statutory obligation to repair and maintain a rental unit or residential property. Having bedbugs in a rental unit is generally not a ground for eviction of the tenant since bed bugs may be introduced into a rental unit unknowingly or by carrying out ordinary living activities. However, where a tenant intentionally or negligently introduces bed bugs to a property or a tenant fails to sufficiently prepare their possessions and the rental unit for pest control treatment I find there may be a basis for eviction since bedbugs may spread through the residential property, impacting other occupants of the property, and risking great expense for the landlord.

In this case, it is undisputed that the tenant had bedbugs in his unit in 2015 and as part of the bedbug treatment certain untreatable possessions (the wagon wheel and saddle) had to be permanently removed from the rental unit. However, the tenant brought those items back into the rental unit which I find to be negligent on his part.

It is undisputed that bedbugs were found in the rental unit for a second time in October 2016 and the rental unit has been sprayed repeatedly since then. The landlord points to the tenant's lack of co-operation and effort to downsize and clean the rental unit as the

reason several months have passed with multiple sprayings as the reason the bedbugs have not yet been successfully treated.

Based on the evidence before me, I find the landlord has made significant efforts to facilitate successful treatment of the rental unit on many levels including: multiple sprayings of the rental unit; sprayings of the hallway and adjacent units; obtaining a replacement mattress for the tenant and a mattress encasement; regular inspections and providing advise as to the areas that still require the tenant's attention; and, heat treatment of the tenant's possessions. I heard opposing testimony as to whether bedbugs remain nit he rental unit and I find I prefer the landlord's confirmation that they do considering the unopposed submission that the tenant previously thought the bedbugs were gone when in fact they had infested his replacement mattress. Therefore, I accept that despite the landlord's great efforts, bedbugs remain in the rental unit.

Based on the landlord's detailed notes provided as evidence, and the necessity for repeated sprayings, I accept that the tenant's actions to clean and declutter the rental unit have been inadequate.

In light of the above, I find I prefer the landlord's evidence that the tenant's actions, or lack thereof, have resulted in a repeated and on-going bedbug infestation that has yet to be effectively treated. I find the tenant was negligent in bringing in items that had a high likelihood to reintroduce bed bugs to the rental unit and I accept that he has failed to take adequate action to prepare the rental unit for effective treatment.

As the bedbugs have remained in the unit I accept that the risk of infestation of other rental unit and common hallways persists. I accept that the neighbours who have had to endure bedbug sprayings have been impacted and that there is risk of subsequent sprayings or bedbug bites should the tenancy continue. Accordingly, I find the tenant's conduct has jeopardized the lawful right of another occupant to quiet enjoyment of their units, and put the landlord property at significant risk of becoming bedbug infested. Therefore, I find there was sufficient basis for the landlord to serve the tenant with the 1 Month Notice and I dismiss the tenant's request that I cancel it.

Having dismissed the tenant's application, I provide the landlord with an Order of Possession with this decision. I have considered the positions of both parties with respect to the effective date of the Order of Possession. Given the date of this decision and the limitations of the tenant, **I grant the Advocate's request for an Order of Possession effective September 30, 2017.** That being said, **I order that the tenant**

remains obligated to pay rent for September 2017. I further order that the tenant must not interfere with any inspections or bedbug treatments the landlord may determine to be appropriate to control or eradicate bedbugs at the property.

Conclusion

The tenant's application to cancel the 1 Month Notice has been dismissed.

The landlord has been provided an Order of Possession effective at 1:00 p.m. on September 30, 2017.

I have ordered the tenant to pay rent for September 2017 and not interfere with any inspections or bedbug treatments the landlords determines to be appropriate to control or eradicate bedbugs at the property.

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: August 25, 2017

Residential Tenancy Branch