



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIGHTHEART REAL ESTATE HOLDING CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord make emergency repairs for health or safety reasons; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The tenant attended the hearing and gave affirmed testimony and called one witness who gave affirmed testimony. An agent and a witness of the landlord also attended and both gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

Neither of the parties has provided evidentiary material in accordance with the Rules of Procedure and none of it is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to make emergency repairs for health or safety reasons, particularly the treatment of bedbugs?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement and more specifically with respect to entering the rental unit?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on January 1, 2012 and reverted to a month-to-month tenancy after March 31, 2012, and the tenant still resides in the rental unit. Rent in the amount of \$793.00 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 tenant in the amount of \$375.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 1 bedroom apartment in a complex containing 20 suites in total.

The landlord's agent further testified that on March 31, 2018 the landlord's agent pinned a 2-page One Month Notice to End Tenancy for Cause to the door of the rental unit. It is dated March 30, 2018 and the effective date of vacancy would have been April 30, 2018. The landlord's agent is not certain which box or boxes had been checked off on the second page.

There have been many problems with the tenant, and the police have been at the rental complex at least 4 times per week between January and April, 2018. The tenant had a girlfriend staying in the rental unit and all they did was fight. Two tenants have moved out because of it in the last 2 months.

Exterminators attended the rental complex twice and sprayed for bedbugs, but the tenant's girlfriend kept bringing them back. The landlord has now retained the services of Orkin pest control who attended but wouldn't spray because the suite wasn't prepared. The landlord's agent gave the tenant a notice which also asked how long it would take the tenant to prepare. The landlord's agent also talked to the tenant about preparing, and entered the rental unit with the tenant's consent and took some photographs. The tenant attacked the landlord's agent while grabbing for the camera. The tenant has previously attacked the landlord's agent, and said he would knock out her teeth, and threatened the landlord's agent and her dog with a pole. He has also accused her of theft.

While the tenant was in hospital, and after the tenant's girlfriend had departed, the landlord's agent entered the rental unit to ensure no burners were on and the rental unit was safe. That was the only time the landlord's agent has entered. The tenant has previously left the shower on for hours causing water to drip through the insulation.

The landlord had been successful in obtaining an Order of Possession at Arbitration in 2016 but out of compassion did not enforce it. However, the tenant has a mental illness and goes through episodes every 6 months or so; it's an on-going thing. The landlord's agent has given so much compassion and allowed the tenant to stay however after he attacked her, the landlord's agent has run out of compassion.

The landlord's witness testified that he would like to see the tenant get some help. He is not capable, but the landlord cannot exterminate until the tenant prepares the rental

unit. The landlord could give a 30 day eviction for that, but instead they went into the rental unit and cleaned it. Water was coming down from a plugged kitchen sink, and the place was a disaster. The landlord's agent and witness cleaned the stove, floors, cupboards, and didn't charge the tenant or the landlord company for that work. The tenant needs help cooking and cleaning, and told police he has bi-polar.

The police finally removed the tenant's girlfriend and she is not permitted on the property by the police. The tenant wasn't able to get her to move out; the police did even though it's the responsibility of the tenant for that rental unit. The landlord's agent and witness cannot continue going through this.

Police have attended regularly, perhaps 20 or 30 times since January, 2018.

The tenant testified that he has not received any written complaints from the landlord. The landlord's agent testified that another tenant moved out but that tenant was talking to the tenant and nothing was mentioned about any problems.

Barely a month goes by when something goes missing from the rental unit, and the landlord's agent won't change the locks. Toonies and loonies went missing and the landlord's witness had told the tenant that the landlord's agent had been in the rental unit alone.

The landlord's agent has fabricated the testimony about threatening her with a bar. The tenant uses it to lock the door and the landlord's agent took it away saying she's afraid the tenant will use it.

The tenant's witness is the tenant's sister and testified that her brother has a mental illness and has been hospitalized 4 times in the last 6 years, not every 6 months as alleged by the landlord's agent. The landlord got an Order of Possession but decided to not enforce it, and now, 2 years later, it's happening again.

The tenant's girlfriend was in the apartment and the landlord said that the tenant couldn't get her to leave. He did try. She was causing problems starting in February or March, 2018. The tenant was falsely accused of assault and ended up in the hospital, and while there, a notice to end the tenancy was posted to the door. The tenant got a copy days later from the landlord's agent.

The landlord wanted to do plumbing repairs, and the tenant wanted the witness to be there. The witness showed up but the landlord's agent didn't want the witness present. The tenant's girlfriend was also there and didn't want the witness to be there. The landlord's agent said the plumber was on the way and made it clear that the witness

wasn't welcome. The tenant's girlfriend called police, who spoke to the tenant's girlfriend and then the landlord's agent told the police that she wanted the witness off the property. The tenant had the right to ask the witness to be there.

It wasn't only the tenant who couldn't get the girlfriend out; the landlord had that problem as well. Now that she's gone, the witness doesn't see any problems going forward. There were 3 times that police were called, and the tenant was in the hospital.

The landlord's agent was attacked by the tenant's girlfriend. The landlord's agent had asked the tenant if she should change the locks to the rental unit, and he said, "Yes."

The witness believes that the tenant tried to get the camera from the landlord's agent, and that her motive was to get evidence after issuing the notice to end the tenancy.

The witness was going to go into the rental unit to clean in order to prepare for pest spraying. The witness is the one helping the tenant; cleaning and looking for a place to move to, but was not doing so while the tenant's girlfriend was there.

Analysis

Firstly, 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. In the case of a One Month Notice to End Tenancy for Cause, the reasons are limited to:

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

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (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;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

In this case, the landlord's agent was not able to say which of the recitals were checked off. The landlord relies on the testimony of the parties, but that does not satisfy the requirements of the *Residential Tenancy Act*. In the absence of a copy of both pages of such a notice, and in the absence of any testimony about which recitals, if any, were checked off, I cannot be satisfied that the Notice was given in accordance with the *Act*, and I cancel it.

The parties agree that the landlord has taken steps to eradicate the bedbug problem, and the tenant's witness has agreed to assist in preparation. Extermination is the landlord's responsibility but the preparation is the tenant's responsibility. I order that the landlord retain the services of an exterminator and provide the tenant with notice of the date and time and required preparation in writing at least 3 clear days before the extermination is scheduled to take place, and I order that the tenant ensure that preparation is done in accordance with the landlord's notice in sufficient time to ensure the extermination can take place. For clarity, 3 clear days means that there must be at least 3 days between the date the notice is given and the date of extermination.

The *Residential Tenancy Act* is clear with respect to a landlord's ability to enter a rental unit:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I accept the testimony of the landlord's agent that she entered the rental unit while the tenant was in hospital to ensure there were no burners on and the place was safe, and although that may seem prudent, it does not necessarily satisfy the requirements of the *Act*, and I order the landlord to comply with Section 29 above.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues.

I hereby order the landlord to retain the services of an exterminator to eradicate the bedbug problems.

I further order the landlord to provide the tenant with notice of the date and time and required preparation in writing at least 3 clear days before the extermination is scheduled to take place.

I further order the tenant to ensure that preparation is done in accordance with the landlord's notice in sufficient time to ensure the extermination can take place.

I further order the landlord to comply with Section 29 above.

This order is final and binding and may be enforced.

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: May 24, 2018

Residential Tenancy Branch