



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO F.O.S. NON PROFIT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On August 10, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) asking that a 1 Month Notice to End Tenancy for Cause be cancelled.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord testified that the Tenant did not serve his evidence to the Landlords correct address. The Landlord testified that she received the Tenant’s evidence on August 18, 2018, at the mailbox located at the rental property.

I find that the Landlord received the Tenant’s evidence at least two weeks prior to the hearing and has had an opportunity to consider it. The Tenant’s evidence is accepted.

The Landlord issued a 1 Month Notice To End Tenancy For Cause that does not contain a Landlord’s signature or date. Despite section 52 of the Act which requires that the Notice be signed and dated, I find that the Tenant received the 1 Month Notice in person from the Landlord on July 31, 2018. I find that the Tenant knew the date of

issuance and who issued the 1 Month Notice and disputed the Notice. The hearing for the dispute of the 1 Month Notice proceeded.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy commenced in September 1996, and is on a month to month basis.

The Landlord purchased the rental property eight years ago and inherited the Tenant and the tenancy. The Landlord submitted that the Tenant is one of a couple of holdovers.

The Landlord is a non-profit housing company and the Landlord submitted that the Tenant does not fit their mandate. The rental property contains 13 Tenants who suffer from schizophrenia and other mental health issues.

The Landlord testified that they became aware of bed bug activity at the rental property and they brought in a pest control company to treat the problem. The Landlord testified that on July 22, 2018, the Tenants at the rental property were provided written notice of the treatment and the protocol on what is expected to prepare the units for the treatment.

The Landlord testified that she was on site at the rental; property between July 22 to July 26 providing assistance. The Landlord testified that on July 26, the Tenant told her that he was in the process of preparing but he was not going to be ready. The Landlord testified that she entered the Tenant's unit and she became aware that the Tenant did not take steps to ready his unit. The Landlord testified that the Tenants unit had clutter; open food; and no access to walls. The Landlord provided photographs taken inside the Tenant's unit showing clutter.

The Landlord testified that they were not able to treat the Tenant's unit and further treatments are needed incurring huge costs.

The Landlord issued the Tenant a 1 Month Notice To End Tenancy For Cause which was served in person on July 31, 2018. ("the 1 Month Notice"). The 1 Month Notice is

not signed or dated. The Landlord selected the following reasons for ending the tenancy in the 1 Month Notice:

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 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the notice by applying for dispute resolution on August 10, 2018, at a Service BC location. The Tenant's application was forwarded to the Residential Tenancy Branch and processed a few days later.

In response to the Landlords' testimony, the Tenant testified that he was not able to prepare his unit because he has a health/ heart problem and is unable to lift anything heavy. The Tenant also testified that it was a very hot day.

The Tenant testified that he informed the Landlord that he had a problem and would not be able to do it. He testified that he asked his neighbour for help and she provided some assistance.

The Tenant testified that he did not ask the Landlord for help and that the Landlord did not offer any assistance. He submitted the Landlord had previous concerns with him regarding hoarding.

The Tenant testified that he wanted to comply with the treatment; however the heat was killing him. He submitted that the Landlord treats him as persona non grata.

The Tenant provided a letter from a Doctor dated July 30, 2018, that states the Tenant is not allowed to do any heavy lifting or strenuous activity until further notice, due to medical concerns.

In reply, the Landlord testified that in the spring of 2018, the Landlord was concerned about hoarding and inspected five rental units, including the Tenants unit. The Landlord testified that the Tenants unit was found to not present a fire safety issue.

The Landlord testified that she was not aware of the Tenants health challenges. She submitted that the date of the Doctors letter is dated after the date the 1 Month Notice was issued and it does not say he has a life threatening issue. She submitted that the Tenant did not talk about his condition in life threatening way and he is being disingenuous.

Analysis

Section 32(1) of the Act states that a Landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) *complies with the health, safety and housing standards required by law, and*
- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.*

In the matter before me, the Landlord has the onus of proof to prove that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and/or put the Landlord's property at significant risk.

Based on the evidence and testimony before me and on a balance of probabilities, I make the following findings:

I find that the Landlord is being diligent in maintaining the property by having a pest control company treat the bedbug issue. I find that the Landlord provided the Tenant with advance notice of the treatment and how to prepare a unit for treatment.

I find that on the day of the treatment the Tenant informed the Landlord that he was not ready. Due to the Landlord's previous concerns regarding the Tenant's unit the Landlord should not have been surprised to find clutter when she entered the unit.

While I acknowledge the Landlord's submission that Doctors letter is dated after she issued the 1 Month Notice, I find that this concern is not sufficient to establish that the Tenant was not affected by a medical condition on the date of the pest control treatment.

I find that the Tenant wanted to comply, as he attempted get assistance from a neighbor and alerted the Landlord that he was not ready.

I find that the presence of bedbugs at the property are a nuisance and need to be treated; however, I find in the circumstances before me of the Tenant's failure to be

ready did not seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and/or put the Landlord's property at significant risk.

The Tenant is cautioned that in the future, if he receives notice of pest control treatment, he needs to follow the protocols for preparing his unit for treatment. If the Tenant is unable to prepare on his own, he is responsible for getting assistance to prepare the unit. Any future non-compliance by the Tenant may result in another notice to end tenancy being issued.

I find that there is insufficient evidence to support ending the tenancy; therefore, I cancel the 1 Month Notice To End Tenancy For Cause dated July 31, 2018.

The Tenant's application is successful. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The 1 Month Notice To End Tenancy For Cause dated July 31, 2018 is set aside.

The tenancy will continue until ended in accordance with the Act.

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: October 04, 2018

Residential Tenancy Branch