



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

On September 25, 2018, a hearing was held to address the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

After over an hour of hearing time, and after providing the parties an opportunity to discuss a settlement of their dispute, the parties were unable to reach a settlement. The central issue in this dispute is the tenant's compliance with the landlord's treatment protocol to eradicate bedbugs in the rental unit. Sufficient time had not yet elapsed to determine the results of a bedbug treatment applied at the rental unit on the morning of the hearing. Therefore, it was agreed by both parties that an adjournment of this hearing to a later date would allow for a potential resolution of this dispute.

The parties were given specific instructions to submit any relevant evidence to the Residential Tenancy Branch in relation to the compliance with the treatment program at least 14 days prior to the adjourned hearing date and to share that evidence with the other party.

The reconvened hearing was held on November 26, 2018 resulting in this Decision. The Decision is to be read in conjunction with the Interim Decision dated September 25, 2018.

At the outset of the hearing, both parties confirmed that they were in receipt of each others evidentiary materials submitted for the reconvened hearing.

Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the cost of the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Neither party submitted a written tenancy agreement into documentary evidence. Both parties confirmed the following information pertaining to the terms of the tenancy agreement:

- The rental unit consists of a two-bedroom, two-level townhome in a residential complex of approximately 77 rental units.
- This tenancy began as a fixed term in June 2016. At the end of the fixed term the tenancy converted to month-to-month and continues on that basis.
- Monthly rent in the amount of \$1,200.00 is payable on the first day of the month.

- The tenants paid a security deposit of \$400.00 at the beginning of the tenancy to the previous landlord. The security deposit was transferred to the current landlord, who is the receivership manager, when the property was placed in receivership on September 15, 2017.
- The tenant and four other occupants reside in the rental unit.

The One Month Notice dated July 25, 2018, submitted into evidence by both the landlord and the tenant, states an effective move-out date of August 31, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

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 "Details of Cause" section of the notice provides the following additional details pertaining to the reasons for ending the tenancy, as follows:

Tenant has not been cooperative with the bed bug [sic] treatment. From the text messages thread (Attached) showing that we have scheduled treatment multiple times since April, but had to cancel and reschedule because the tenant couldn't prepare the unit properly or left town in a short notice. The tenant has put the landlord's property at serious risk and jeopardized all other tenant's health and safety.

The landlord asserts that the tenant has continued to fail to follow the bedbug treatment protocols, and as such, the tenant has continued to jeopardize the health of the other residents in the surrounding rental units and caused the landlord to incur additional financial costs for retreatments as the treatments are no longer being guaranteed by the pest control company.

The landlord testified that following the September 25, 2018 bedbug treatment, bedbugs were found in the rental unit during the October 16, 2018 inspection. As a result, a subsequent treatment was arranged from November 2, 2018. However, the pest control technician was ill and unable to attend on that date, so the treatment was rescheduled to November 7, 2018. At the November 7, 2018 treatment, the pest control technician reported to the landlord that the tenant had failed to prepare the unit in accordance with the pre-treatment instructions, and as a result, the pest control company would not provide their usual guarantee of service.

In support of their testimony, the landlord called on the pest control technician to provide witness testimony confirming that the tenant has not followed the treatment protocol. The landlord submitted into documentary evidence the receipts for payment of November 7, 2018 bedbug treatment for the tenant's rental unit and the rental unit beside the tenant's unit. The landlord pointed to the receipt for the tenant's rental unit upon which it is noted that the tenant's failure to follow the treatment preparation protocol has voided the pest control treatment three-month guarantee. The landlord explained that they will now have to pay for future treatment, if required, that would otherwise have been covered under the warranty.

The tenant testified that they did their best to follow the treatment preparation protocol by getting rid of some infected furniture and renting a storage locker to store some of their belongings to allow for more space in the rental unit for better treatment access.

The tenant submitted photographic evidence in support of their testimony. I note that the photographic evidence also includes a photograph of one bedroom with metal bunk bed frames, and the beds appear to have been removed from the bed frames.

The tenant testified that they speak English as a second language, and that they misunderstood the preparation instructions. The tenant acknowledged that they removed their beds prior to treatment, contrary to the preparation instructions, as they thought that "bedding" referred to the actual beds, not just the bed sheets, blankets, etc.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant was personally served and received the landlord's One Month Notice on July 25, 2018.

The tenant filed an application to dispute the notice on August 2, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end

tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

Based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord has proven the grounds for issuing the One Month Notice for the following reasons:

- Following the September 25, 2018 treatment, bedbugs were found in the tenant's rental unit during the October 16, 2018 inspection.
- The tenant acknowledged that due to their misunderstanding of the treatment protocol instructions, they failed to comply with all the instructions as they removed their beds from the rental unit, when they should have only removed the bedding.
- The witness testimony provided by the pest control technician confirmed the landlord's claim that the tenant did not properly prepare the rental unit in advance of the bedbug treatments, and that by doing so, the tenant's have made treatment in the rental unit so difficult that the pest control company will not honour it's usual service guarantee.
- The rental unit neighbouring the tenant's rental unit has now become infected with bedbugs and has required treatment.

Therefore, the One Month Notice is of full force and effect, and the tenant's application is dismissed without leave to reapply.

Section 55(1) of the *Act* states that if a tenant makes an application to dispute a notice the arbitrator must grant an Order of Possession if the notice complies with the *Act* and the tenant's application is dismissed. As I have made a finding that the One Month Notice complies with section 52 of the *Act* and the tenant's application to the cancel the One Month Notice is dismissed, the landlord must be granted an Order of Possession.

As the effective vacancy date of the notice has now passed, this Order of Possession will be effective two days after service upon the tenant by the landlord.

As the tenant was not successful in their application, the tenant must bear their own cost of the filing fee for this application.

Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective two days after service on the tenant. The landlord must serve this Order on the tenant as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 3, 2018

Residential Tenancy Branch