



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATTON VENTURES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated December 17, 2018 ("One Month Notice").

The Tenant, her two Advocates, M.M. and A.M. (the "Advocates") and her neighbour, J.G., appeared at the teleconference hearing and gave affirmed testimony. Three Agents for the landlord, T.N., D.H. and J.W. (the "Landlord"), appeared at the teleconference hearing and gave affirmed testimony.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant, her Advocates, her neighbour, and the Landlord's agents were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I 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 Matters and Procedures

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to them.

I find that agents for a landlord meet the definition of "landlord" in the *Act*, therefore, for simplicity, I have referred to the Landlord's agents in this decision as "Landlord".

The evidence before me is that the One Month Notice was posted on the Tenant's door

on December 17, 2018. The Tenant said she received it that day. Accordingly, the Tenant had until December 27, 2018 to apply to dispute the One Month Notice.

The Landlord said that the Tenant's Notice of Hearing package was not served on the Landlord within the 10 days that the Tenant had to dispute the One Month Notice. Section 47(4) of the *Act* states that a "tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice." The *Act* does not say that it must be served within the 10 day timeframe, as the Landlord stated.

According to the documentary evidence before me, the Tenant applied to dispute the One Month Notice on December 21, 2018. Section 59 (3) of the *Act* requires a person applying for dispute resolution to give a copy of the application to the other party within three days of making it. Further, Rule of Procedure 3.14 requires all documentary evidence on which a party is relying to be served on the other party not less than 14 days before the hearing.

The hearing was scheduled for January 31, 2019, and the Tenant had to serve the Landlord with her application for dispute resolution by December 24, 2018 and all her documentary evidence on the Landlord by January 16, 2019.

The Tenant's evidence is that she served her application and documentary evidence together; she provided a registered mail receipt and tracking number for the documents she sent to the Landlord in this matter. The Canada Post website indicates that the Tenant's package was processed by the post office on January 9, 2019 and delivered on January 10, 2019. Accordingly, the Tenant's service of her application on the Landlord did not comply with section 59 (3) of the *Act*, but her service of her documentary evidence did. The Landlord indicated in the hearing that they had sufficient time to consider the evidence before him, so I find that the late service of the Tenant's application was not fatal to her claims.

Issues to be Decided

- Is the Tenant entitled to an order cancelling the One Month Notice?
- Is the Landlord entitled to an order of possession?

Background and Evidence

Both Parties testified that the tenancy commenced on July 1, 2017, with a monthly rent of \$900.00 due on the first of every month and a security deposit of \$450.00; these details were consistent with the tenancy agreement that the Landlord submitted into evidence.

The Tenant's Advocates testified that the Tenant was served with the One Month Notice to vacate the rental unit, because she would not dispose of her bed frame after the Landlord fumigated the rental unit for bed bugs in October 2018.

In her documentary evidence dated January 8, 2019, the Tenant said she contacted the Landlord, J.W., in September 2018 to inform her that there were bed bugs in the rental unit. The Tenant said that a maintenance man came to inspect and said there was nothing to worry about.

In the hearing, the Landlord said there were bedbugs in the Tenant's apartment in early October 2018. The Landlord said she had had many conversations with the Tenant about the problem. The Landlord said the Tenant has a beautiful apartment and they do not want her to move out, as she is a great tenant. However, the Landlord said the Tenant is reluctant to do anything to mitigate the bed bug problem in the rental unit, which is why they issued the One Month Notice.

The Landlord submitted an undated letter from their regular pest control services company, which states:

Who it may concern:

On October 22, 2018, I went to [rental unit address], to fumigate for bedbugs, notice the unit had evidence of bedbugs, during my inspection notice the rooms were very crowded with furniture, also in one bedroom had a wooden bed frame with fabric. [G.M.] did the original inspection and he recommended to disposal the bed frame. On Saturday, October 27, 2018 I deliver the chemical MSDS Sheets, requested by the unit tenant, at that time she asked me to come inside and see the bedbugs on her bed. I told her, the bedbugs are coming from the bed frame and recommended the immediate disposal because I threaded and still infested with bedbugs.

During the fumigation I didn't see any other crawling insects but bedbug.

Thank you
Regards
[E.G.]

[reproduced per original]

The Landlord said she visited the Tenant in early November 2018 and that the Tenant was trying to treat the bed bug problem herself. The Landlord said in the hearing:

I said to her – they've asked you to remove your bed frame. I could have [Landlord's pest control service] come back and inspect. He was there the following Monday and he reported that the problem was still there. My frustration is that I don't want her to leave, but that I have an insubordinate tenant who won't comply with the things that I have asked her to do. We chatted about the fact that she thought about having it recovered or varnished to seal out the possibility of having eggs. I asked her to mitigate.

The Tenant's neighbour, J.G., said he was helping the Tenant throughout this time. He said that the Tenant wanted a second opinion before she threw out her bed frame that had cost her \$1,400.00. J.G. said the Tenant spoke to two different companies who told her that her bed frame did not need to be thrown out.

The Tenant submitted documentary evidence demonstrating that on December 12, 2018, she arranged for another pest control company, O.C., to attend the rental unit to treat the bed bug problem; she said this service cost her \$725.00. The Tenant submitted a report from this company that states:

Complete Apartment treated.
Bed has been disassembled
completely and a deep
chemical treatment has been done.

Follow up treatment
Booked for Dec 28
12-1 PM

Same Prep is required

The Tenant submitted a second report from the pest control company, O.C., which said:

Follow up treatment completed.
First treatment was successful,
No live bugs found.

Bed Frame is clear of activity.

Customer is ok to put house
Back as normal.

[reproduced per original]

In the Tenant's report dated January 8, 2019, she said she was away from her home for two nights during the treatments and the company she hired did two sprays and "has given the unit a clean bill free from bugs and the bed frame is clear of activity." The Tenant submitted receipts for the fumigation and the hotel stay.

The Tenant's neighbour, J.G., testified that the bed bugs were in the building before the Tenant moved in and he questions the Landlord's means of eliminating the problem by having tenants dispose of their furniture in the way they do. J.G. said he had to throw away two couches because of bed bugs, but that the couches were not wrapped or sprayed before they were removed, they were just picked up and thrown out.

The Landlord said they have instructions that they give tenants for this type of problem, but the instructions were not in evidence before me.

Analysis

The Landlord said she expected the Tenant to mitigate the bed bug problem and she implied that the only way to do this was with the Tenant disposing of her bed frame. The evidence before me is that the Landlord's pest control company was unable to eradicate the bed bugs from the rental unit and that they blamed the bed frame for the problem; however, the Tenant retained a different pest control company that solved the problem by doing two treatments, without having to dispose of the bed frame. I find the Tenant mitigated the bed bug problem.

The onus is on the Landlord to establish on a balance of probabilities that the One Month Notice is legitimate. Section 47 of the Act says that a Landlord may end a tenancy by giving notice to a tenant if, as the Landlord has alleged in this case:

(d) the tenant or a person permitted on the residential property by the tenant has

. . .

(iii) put the landlord's property at significant risk;

At her own effort and expense, the Tenant eliminated the bed bug infestation in the rental unit, which diminished the risk to the Landlord's property.

I find that the Landlord has not met the burden of proof to establish that the One Month Notice is legitimate in this set of circumstances. The Tenant's Application is successful – the One Month Notice is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The Tenant's Application is successful. The One Month Notice to End Tenancy for Cause dated December 17, 2018 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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*.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

Dated: March 04, 2019

Residential Tenancy Branch