



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353178 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on September 26, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession pursuant to section 56 of the *Act*, and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by M.T., an agent, who was accompanied by C.M. and S.W., witnesses. The Tenant attended the hearing on his own behalf. All in attendance provided a solemn affirmation.

On behalf of the Landlord, M.T. testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by posting a copy to the Tenant's door on October 3, 2019. The Tenant acknowledged receipt. The parties were represented or in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purpose of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord wishes to end the tenancy. M.T. testified that the Tenant has not cooperated with the Landlord's efforts to address a bedbug infestation in the rental property that dates back to July 2018. Specifically, M.T. testified that the Tenant has not prepared his rental unit for treatment adequately by following instructions provided despite being offered assistance. Although treatment has eradicated the infestation in all other units in the rental property, bedbugs continue to infest the Tenant's unit. M.T. testified that other tenants have moved out of the rental property as a result.

In support, the Landlord submitted a pest control report which indicates the Tenant did not fully complete the required preparation. Another pest control report indicates the Tenant declined a proposal to install bait traps.

In further support, the Landlord submitted an audio file that was described in greater detail by M.T. In it, C.M. is heard knocking on the Tenant's door and then advising the Tenant that "powder" has to be left on the floor. The Tenant did not respond but can be heard closing the door in response to the request. M.T. testified the powder referred to was used to address bedbugs and that the Tenant was advised not to vacuum it up.

In addition, M.T. testified the Tenant was aggressive with the building manager when he yelled at her on October 18, 2018.

In reply, the Tenant testified he moved into the rental unit in 2016. He testified that bedbugs were noticed early in the tenancy, but no steps were taken to address the issue until C.M. became building manager. The Tenant testified further that he has not denied access to his rental unit but acknowledged he was unable to do some preparation work due to fibromyalgia. Further, the Tenant denied yelling at the building manager and testified that she yelled at him. The Tenant claimed the Landlord did not offer any assistance with preparing his rental unit for treatment. In addition, the Tenant testified that he did not vacuum the pest control powder but was just trying to address pet hair.

Analysis

Based on the documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied...

- (a) *The tenant or a person permitted on the residential property by the tenant has done any of the following:*
 - (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;*
 - (iii) *put the landlord's property at significant risk;*
 - (iv) *engaged in illegal activity that*
 - (A) *has caused or is likely to cause damage to the landlord's property,*
 - (B) *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*
 - (C) *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
 - (v) *caused extraordinary damage to the residential property, and*

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

[Reproduced as written.]

In this case, I find it is more likely than not that the Tenant's failure to prepare his rental unit for treatment as instructed has contributed to the ongoing bedbug issue in his rental unit. However, there is insufficient evidence before me of an "immediate and severe risk" that justifies the end of the tenancy on an expedited basis for any of the reasons enumerated in section 56(2)(a) of the *Act*. No doubt this has been challenging for the Landlord's representatives. However, while I accept the Tenant has not fully prepared the rental unit for treatment, there is insufficient evidence the Tenant has prevented the pest control workers to access the rental unit.

Further, while I accept that the Tenant has raised his voice at the building manager, I find there is insufficient evidence before me to conclude that the incident described was sufficient to end the tenancy on an expediated basis for any of the reasons enumerated in section 56(2)(a) of the *Act*.

Finally, even if I had concluded there was a sufficient basis for ending the tenancy, I find it would not be unreasonable or unfair to the Landlord to wait for a notice to end the tenancy under section 47 of the *Act*.

In light of my findings above, the Application is dismissed without leave to reapply.

Conclusion

The Application is dismissed without leave to reapply.

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 22, 2019

Residential Tenancy Branch