



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROTHERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC RP

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 and for an order that the landlord make repairs to the rental unit or property.

The tenant attended the hearing with a support person, and an agent for the landlord attended with an assistant. The tenant and the landlord's agent each gave affirmed testimony and were given the opportunity to question each other and give submissions.

At the commencement of the hearing the tenant withdrew the application for an order that the landlord make repairs to the rental unit or property.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and specifically with respect to the reason for issuing it?

Background and Evidence

The landlord's agent (hereafter called the landlord) testified that this fixed-term tenancy began on June 1, 2019 and expires on May 31, 2020, and the tenant still

resides in the rental unit. Rent in the amount of \$1,100.00 per month is 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 \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in an 11 story block, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on August 13, 2019 the landlord caused a One Month Notice to End Tenancy for Cause to be served to the tenant by attaching it to the door of the rental unit. A copy has been provided for this hearing and it is dated August 13, 2019 and contains an effective date of vacancy of September 30, 2019. The reason for issuing it states:

- 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.

The Details of Cause(s) section states: Tenant had bed bugs on her chair; decided she could not wait for the haul away people, so pushed it over and off 3rd floor balcony. It hit the courtyard below, a piece broke off and hit the pharmacy window; did not break it but scared the persons inside.

The landlord's agents made arrangements to have a pest control company spray for bedbugs on July 8, 2019 and a second treatment was required. That was scheduled for July 18, 2019 and a technician attended at the rental unit but was refused access by the tenant. The treatment was re-scheduled for July 24, 2019 and the technician again was refused entry. The treatment wasn't done until August 9, 2019, well after it was required to be done.

On August 13, 2019 the pharmacy located on the main floor of the rental building contacted the building manager, and an Incident Report has been provided for this hearing written by the building manager. It states that the pharmacy person was very concerned and scared after the tenant threw a chair out the window and over the balcony of the tenant's 3rd floor apartment. A piece of the chair broke off and hit the window of the pharmacy. The window didn't break, but the persons inside were frightened.

The tenant testified that prior to renting this unit she had been residing in another unit in the same complex. The tenant had been on a list to move to a bigger unit. The tenant had asked one of the resident managers what the bugs were in the apartment, and was

told they were bedbugs, that the landlord could spray and gave the tenant some spray. However, that unit was a bachelor suite and the tenant had a queen bed, chair and love-seat there was not much room and the tenant couldn't move the furniture.

The tenant moved into this new rental unit on June 1, 2019 and reminded the building manager about bedbugs. Due to the infestation the tenant's mattress had to be discarded as well as other furniture, and all that was left to move to the new rental unit was the chair. The new rental unit had been treated, and the technician said there was evidence of bedbugs in the zipper of the tenant's chair. The next day the tenant, assuming they had treated the chair, found the bugs crawling on her. During the move is when the tenant realized how bad the bugs were; it was a severe infestation. The tenant unzipped the chair and noticed a beehive of bedbugs. The tenant called and spoke with a person in the landlord's office to complain about bedbugs, and was told that dump people wouldn't arrive until the afternoon. With the assistance of the tenant's social worker, they removed the chair out of the rental unit and onto the balcony, not wanting to take it through the building or into the elevator.

The tenant didn't throw the chair off the balcony or fling it over hap-hazardly, but dropped it in a controlled drop. The balcony is over a courtyard and only residents can access it. The tenant ensured that the area was clear and that no one was coming in from the garage. A piece of plastic broke off the chair. When the building manager returned, the tenant took him to the balcony to show him where the chair was so that it could be disposed of. The other building manager had already told him what had happened, and the building manager advised the tenant that the police would be attending. The junk removal people arrived just prior to the conversation between the parties.

Analysis

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 this case, the reason for issuing it is in dispute.

The *Act* also states that a landlord may end a tenancy if:

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

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The tenant testified that the chair was dropped in a “controlled drop,” which was questioned by the landlord. I agree that it was not possible to drop a chair from the 3rd floor controllably. In the circumstances, I find that the tenant’s actions seriously jeopardized the safety of the landlord or another occupant, and I dismiss the tenant’s application to cancel the One Month Notice to End Tenancy for Cause.

The *Residential Tenancy Act* specifies that where I dismiss a tenant’s application to cancel a notice to end a tenancy given by a landlord I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant’s application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

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: October 25, 2019

Residential Tenancy Branch