



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord to the tenant.

The tenant, his advocate, and the landlord's agent (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence. Both parties confirmed receipt of the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to prove that they have cause to end this tenancy?

Background and Evidence

I was presented with undisputed evidence that this tenancy originally began 2011.

The rental unit is located in a multi-unit building.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated October 15, 2019, was served to the tenant when it was posted on his door on that date, according to the landlord, and listed an effective end of tenancy of November 30, 2019.

The causes listed on the Notice alleged that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

In support of their Notice, the landlord submitted that the issue causing the landlord to issue the tenant the Notice concerned a problem with a cockroach infestation in the tenant's rental unit, with the tenant's lack of cooperation in the treatment.

The landlord said that the tenant was advised to prepare his unit for the treatment, on multiple occasions, and the tenant failed to cooperate. The landlord submitted further that the tenant was warned to clean his unit multiple times and that the sanitation did not improve, which prevented the pest control company from performing a proper treatment. The lack of cooperation was ongoing for several months prior to the Notice being issued.

The landlord said that she advised the tenant to hire a cleaner if he was physically unable to properly clean the unit prior to the inspection, yet after three inspections, she noted that the condition of the rental unit did not improve.

The landlord said that there was an issue in adjoining units, and that the lack of a proper treatment in the tenant's unit prevented the entire area from being rid of the cockroaches.

The landlord confirmed that she did not take photos during her inspection of the rental unit.

The landlord's relevant evidence included copies of the pest control service reports, written notices and warnings to the tenant and a copy of the Notice.

Cross examination of the landlord by the tenant's advocate-

The landlord said she was not sure how they became aware of the cockroach issue and confirmed their evidence that several treatments were successfully performed despite what the landlord said was an issue with the condition of the rental unit.

The advocate addressed each report and written warnings to the tenant with the landlord.

The landlord said the tenant was given a list on how to prepare the rental unit, but confirmed the list was not provided into evidence.

The advocate pointed out to the landlord that on their evidence that the rental unit was treated on eight occasions, and on two occasions, the treatment was a spray.

The landlord replied that the treatments were only partially completed due to the condition of the unit, as it was not properly prepared.

Examination of the tenant by his advocate-

The tenant said he went by the landlord's office to complain about the cockroaches and was told to remove items in his cupboards and to sweep.

The tenant denied being provided a list from the landlord and that he no longer has cockroaches in his rental unit, after the treatments. The tenant said he has only seen one cockroach about two months ago, but none since then.

The advocate argued that cockroaches are a problem in the building and that this tenant has not had any previous issues during the tenancy.

Analysis

When a tenant has properly filed an application disputing a landlord's Notice to end a tenancy, as is the case here, the obligation is on the landlord to substantiate that they had sufficient cause on the day the Notice was issued to end this tenancy.

In this case, the landlord has claimed that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

In this case, the tenant said without dispute that he advised the landlord of cockroaches in his rental unit.

Section 32 of the *Act* addresses the landlord and tenant's obligations to repair and maintain the rental unit. The landlord bears the cost and administrative burden of arranging for treatments and the tenant has the burden of preparing the rental unit for those treatments and the discomfort of living through the infestation and treatment.

When reviewing the evidence of the landlord, I cannot find that the landlord submitted sufficient evidence to support their Notice. In reaching this conclusion, I note that a pest control company has attended the rental unit 8 times since June 14, 2019, and was treated each time. On 3 separate times, the pest control company noted that the suite was not prepared. On the last noted time, the pest control company wrote that the tenant did not want a treatment as he had only seen one cockroach.

From my reading of the evidence, I find that the pest control company successfully treated the rental unit, as the last reported sign of a cockroach was prior to September 18, 2019; nonetheless, the pest control company provided one further treatment in which they noted that the suite was prepared and treated.

I therefore conclude that the condition of the rental unit did not prevent the treatment on each of the times.

Also, when considering the evidence, I find the pest control company's statements on its standard form to the effect that sanitation in the rental unit required improvement to be vague and uninformative and therefore not helpful to the tenant to understand what was required.

Additionally, I find the landlord submitted insufficient evidence to prove that they provided the tenant a listing of what he must do to meet the standard of the pest control company. The tenant denied receiving it and the landlord did not provide one into evidence. In the absence of a specific list or clear guidance from the pest control company, I find the tenant would be challenged to know what was required of him for a treatment.

Overall, due to the above reasons, I find the landlord has not submitted sufficient evidence to show that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

As a result, I find the landlord's One Month Notice to End Tenancy for Cause dated and issued on October 15, 2019, for an effective move out date of November 30, 2019, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's One Month Notice, and the Notice is hereby cancelled with the effect that 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: December 17, 2019

Residential Tenancy Branch