Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Properties Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, LAT, OLC, FFT

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 October 16, 2020 ("One Month Notice"); to suspend or restrict the Landlord's right to enter; for authorization for the Tenant to change the lock; for an order directing the landlord to comply with the Act, regulation or tenancy agreement; and to recover the $100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord, M.L. ("Agent"), 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 and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said she emailed her Notice of Hearing, Application, and evidentiary submissions to the Landlord in four different packages. She said she sent everything to the Agent that she uploaded to the RTB. The Agent said she received the first email from the Tenant, but not the others.

However, in a Director's Order dated June 24, 2020, the Director repealed Ministerial Order No. M089, the Residential Tenancy (COVID-19) Order, made on March 30, 2020, which allowed documents to be given or served by email. As a result, I find that the Tenant's evidence was not submitted in compliance with sections 88 and 89 of the Act. Therefore, I have not considered the Tenant's evidence, other than that to which the

Agent has referred in her comments as having seen.

The Agent said she slid her evidentiary submissions underneath the rental unit door, "with a tiny corner left out," she said. The Tenant said that she received this, which she said consisted of "about 10 pages." However, sliding evidence under a door is not an accepted means of serving evidence on a party, pursuant to sections 88 and 89 of the Act. Therefore, I have not considered the Landlord's evidence, other than that to which the Tenant has referred in her comments as having seen.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing, and as noted above, only that evidence which the other Party acknowledged in their testimony as having received.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me of the current, corporate name of the Landlord, so I have amended the Respondent's name in the Application to reflect this, pursuant to section 64(3)(c) of the Act, and Rule 4.2.

Prior to the Parties' testifying, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. The Tenant had indicated different matters of dispute on the Application, the most urgent of which is the claim to set aside the One Month Notice. I advised that not all of the claims on the Application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request to set aside the One Month Notice and the claim for recovery of the Application filing fee at this proceeding. The Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 1994, with a current monthly rent of $1,049.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $287.50, and no pet damage deposit.

The Parties both submitted copies of the One Month Notice, which was signed and dated October 16, 2020, and which has the rental unit address. On October 16, 2020, it was served by attaching it to the door of where the Tenant resides. It has an effective vacancy date of November 30, 2020, and it was served on the grounds that:

- the Tenant or a person permitted on the property by the Tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - 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 a document submitted by the Landlord entitled: "Bedbug Arbitration Letter", the Agent said:

> On October 1, 2020, I had a tenant in this building complain of bedbugs. I called [O.], the Pest Control company for this building, and requested them to attend. I provided 24 hour notice to all the tenants in proximity to this unit. On October 8, 2020, they inspected 9 units and found live bugs in the initial complaining unit, and evidence of them in unit 213.
>
> [O.] is a leading pest control company in North America, with over 400 locations, and I use them in many of the buildings I manage.
>
> The pest control technician from [O.] attended the property with a K9 who alerted to bed bug activity in unit 213, and evidence was found (dead bugs, cast skins,

fecal spots, egg casings). No live bed bugs were found. The report states that they were unable to see live bugs as the inspection proved to be difficult due to cluttered conditions.

Quote from the Report:

> ‘Unit 213 was impossible to inspect thoroughly. The tenant was uncooperative and repeatedly interrupted the inspection and caused distraction for the K9. She refused to leave the suite and opted to go into the balcony which I said was fine. She repeatedly came in through the sliding door, asking what we were doing and when would we be done. As a result, we were unable to complete the inspection of the living area.’

It is strange to me that a tenant would refuse treatment to prevent/ensure that bedbugs do not come into their unit when it has been identified that they are definitely in the building and evidence was found in her unit. I want to treat this before it spreads but have been refused access every time.

. . .

[O.] said it would be a waste of time and money to do a heat treatment on only one unit, as it would not kill all the bugs/eggs (etc.) in the other unit, and the bugs would likely reappear.

In the hearing, the Agent said:

As of this point, I don’t want to evict her, I want to do a treatment for bed bugs; I’ve given notices for this, but she wouldn’t let us in.

The unit above has bed bugs and when the treatment company went in, they saw evidence of bed bugs in her unit. There’s no point in treating one unit, or it wouldn’t work. Every step of the way, I’ve only said I want to treat the bed bugs.

She said there isn’t evidence of bed bugs, but I used [O.], which is a big company…. When they went in, she consistently interrupted the canines doing the inspection and they were unable to complete it. They were unable to complete the inspection of the living area.

They saw fecal spots, they didn‘t see live bugs, but they said it was difficult due to cluttered condition - see their report. I just want to treat this, and I don’t have any other options.

I asked the Tenant why she was opposed to the Landlord treating the building for bed bugs, and she said:

> I don't have bed bugs. They want to get rid of me. What happened was they came and pounded on the door. A neighbour said to let them in…. They told me and the cat to stand on the balcony. [O.'s] dog was on the bed – all the beds in my unit - so I had to wash all of that. That is not professional.
>
> The report is inconclusive. There is no report of seeing any bed bugs - dead or alive. They said they saw black fecal on my bedding, - where is the picture of this? There are no bed bugs. . .. I'm not going to get something done for no reason. It is illegal to do a treatment in BC when you don't have a problem.
>
> Another pest company came in and did a thorough inspection. The City had to come in to look at the cupboards and faucet.... I asked, 'would you please check my bed for bed bugs?' They didn't find any.
>
> [O.] did an inspection on October 7 – but it says October 8th on the report. The City did an inspection on October 20th. The company I hired came on October 22nd. If you look them up, they have a four-star rating, while [O.] only has a one-star rating.
>
> On January 5, I said to the City inspector, 'would you please check my bed?' There would be an infestation. He did a full examination and took a picture. I pled with the City for a report. They sent it to me and sent it to [the Agent], as well. It says there is no bed bugs, no infestation, no fecal or bugs…. It is illegal to treat if there is nothing there.
>
> The City person who checked for bed bugs, [M.B.], he's a property use inspector for the City. He can visually see what's there. If there were eggs, they hatch in six to ten days. They have five stages and each stage lasts one week each, and then they become an adult bed bug. We are at 13 weeks since the original, inconclusive report [from [O.]]. I had a professional pest control company do it, too, and found nothing.
>
> I do not trust [the Agent] at all. They want me out of here. Heat treatment is bad and can …. They want me to vacate for 12 hours, remove everything. . . my cat, my daughter. There is no concrete reason for them to do this.

The Tenant submitted a report from the City dated January 5, 2021, and she highlighted the following portion:

> Narrative/Observations
>
> > The Occupant requested me to do another inspection of her Bedroom Mattress. No indication of an infestation upon visual examination for indicators- (fecal stains, dark spots, live or dead Bed bugs), on the surface and crevices of the mattress.

The Agent submitted reports from [O.], their pest control company, who attempted to inspect the rental unit. This report included the following findings:

- The K9 alerted to the underside of the box spring in the bedroom;
- I was unable to see live bugs, as the inspection proved to be difficult due to cluttered conditions;
- Fecal spotting was noted on the bedding, particularly on the comforter on the queen bed;
- The adjacent rooms, rooms above/below, and the room across the hall was inspected;
- The K9 alerted to the large wooden bed frame in the bedroom and the baseboard heater next to the bed;
- Several nymphs were found in the wood joins of the bed frame; and
- Fecal spotting was present on the bed frame and end of the baseboard heater [photographs of this evidence were contained in the report].

The Tenant submitted a letter from her physician which states: “This lady was seen in my office this morning. I inspected her entire skin surface and I saw no evidence of bed bug bites.”

The Agent said:

> I’m at a loss. I don’t understand the Tenant…. When I get a report that says they found evidence, it’s my responsibility as a property manager to eliminate the problem. I offered to have a third company come in, and if she had allowed that - and had they found nothing - I would have cancelled the One Month Notice, if no bed bugs were found. This company has nothing to do with the renovations. She keeps going on about how I’m trying to get her out for other reasons, and it’s just

> not true. These things take so much time – arbitration takes so much time for all of this.

The Tenant said: “I want to pick the company and they pay for it, and no further harassment for any kind of treatment.” She also said:

> Not only does she not believe me, I had to go to the expense of getting a company in and ask the City inspector twice. With her not trusting any of those people…. They have no reason to lie for me. This is the first time I met them. They don’t know me, and they were free to inspect. There’s no clutter. [O.’s] report is inconclusive, and they are just making excuses. They would have been up and large and eating my blood when the company did the report, and the City didn’t find any. They took my bed apart and looked at everything. I don’t have bed bugs and I don’t need this treatment.

The Agent said:

> I did bring another company in. I’ve managed multiple buildings for multiple years. I can’t think of all them off the top of my head. I’d have to look up all the ones that I use. The one that she picked is a small one that I have never heard of before.

The Tenant did not advise me of having submitted a report from the company she hired to inspect her unit. I looked through her evidence and I could not find anything identified as the company she mentioned having retained.

I proposed that the Parties may wish to settle this dispute, rather than leaving it for me to decide. However, they were unable to find common ground in this regard; therefore, I advised that I would decide for them, based on their evidence and the legislative authorities.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows a landlord to end a tenancy for cause:

> 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or

more of the following applies:

. . .

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

(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, or

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

. . .

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant.

Policy Guideline #1 states:

This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet ‘health, safety and housing standards’ established by law, and are reasonably suitable for occupation given the nature

> and location of the property. The tenant must maintain ‘reasonable health, cleanliness and sanitary standards’ throughout the rental unit or site, and property or park. . . .

The Landlord’s pest inspection company, [O.],inspected nine units and found signs of bed bugs in the Tenant’s, and in the original, complaining tenant’s unit. If they were going to spuriously find evidence of bed bugs in the Tenant’s unit, it is curious that they did not find them in other units, which would be more profitable, if that is what the Tenant is implying.

The Agent’s evidence, which I find compelling, is that the company she used is a leading pest control company in North America, with over 400 locations. I find it more likely than not that they are in a better position to determine the presence of bed bugs than is a tenant with internet access or a city employee without any equipment (or canines). Further, the Tenant said she found the company she used on the internet, as opposed to having been referred to them.

The Tenant had a small company inspect for bed bugs, and they found no evidence of the bugs; however, they did not have the resources of the company used by the Landlord to inspect for bugs; and as a result, I find on a balance of probabilities that they are not as dependable as the Landlord’s pest control company.

I find a paragraph from the Agent’s Bedbug Arbitration Letter particularly persuasive:

> It is strange to me that a tenant would refuse treatment to prevent/ensure that bedbugs do not come into their unit when it has been identified that they are definitely in the building and evidence was found in her unit. I want to treat this before it spreads but have been refused access every time.

The Tenant seems resolute on refusing the Landlord’s maintenance requirement, because she “does not trust [the Agent]” and she believes she is better able to determine this matter than are professionals. Unfortunately, this battle on principle will have serious consequences for the Tenant in terms of having to move from a residence where she has lived for over 16 years. I tried to persuade the Parties to settle; however, the Tenant was adamant that she knew best and would not compromise on any ground.

I find that the Landlord cannot eliminate the presence of bed bugs in the building if a tenant in one unit refuses the treatment(s). As a result, I find that the Tenant’s refusal to allow the Landlord’s pest control company to inspect comprehensively and to treat the

rental unit amounts to behaviour that:

- seriously jeopardizes the health or safety or lawful right of another occupant or the landlord, and
- puts the Landlord's property at significant risk.

As the Agent said in her summary:

> [O.] said it would be a waste of time and money to do a heat treatment on only one unit, as it would not kill all the bugs/eggs (etc.) in the other unit, and the bugs would likely reappear.

Based on the evidence before me overall, I find that the Landlord's choice in this situation is to allow bed bugs to infest this building or evict the Tenant, because she refuses to cooperate with the Landlord's attempt to eliminate the presence of bed bugs in of one of its buildings.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice complies with section 52 of the Act, as to form and content. Given the above, and pursuant to section 55 of the Act, I find the Landlord is entitled to an Order of Possession. I award the Landlord with an Order of Possession, effective January 31, 2021 at 1:00 p.m.

Given the length of the tenancy and the possibility of the Parties settling their differences on this issue, I encourage them to continue to find a resolution to this matter, although this is not an Order. However, if a solution cannot be found, then the Landlord has an Order of Possession to serve on the Tenant to end this matter.

Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice, as the Landlord provided sufficient testimony and other evidence to support their burden of proof on a balance of probabilities. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of January 31, 2021 at 1:00 p.m.

I grant the Landlord an Order of Possession effective January 31, 2021 at 1:00 p.m.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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*.

Dated: January 13, 2021

Residential Tenancy Branch