



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in 2007. The current monthly rent is \$895.00 payable on the first of each month. The rental unit is a suite in a multi-unit rental building with 31 units.

The parties agree that there has been an issue with bed bugs in the rental building since approximately 2016. The landlord submits that since 2016 when the issue was first noted there have been several pest control treatments of the rental unit and other units in the building. The landlord submits that while each course of treatment has found temporary relief from the bed bug infestation, the pests inevitably return requiring subsequent work.

The landlord submits that the most recent round of treatments concluded in January 2021 and since that time additional bed bugs were confirmed in the rental unit on February 8, 2021. The landlord testified that they believe the re-infestation is due to bed bugs that were protected from the fumigation treatment inside the tenant's personal possessions. The landlord said that they have concern that any treatment that is done of the rental unit is promptly undone by the bed bugs surviving in the tenant's possessions or being reintroduced to the building through items brought into the building by the tenant.

The landlord provided written submissions, correspondence with third-party pest control companies outlining the issue, photographs of the suite and invoices for past treatments. The landlord's witness is from a third-party pest control company and they testified that due to the volume and types of possessions kept in the rental unit they believe vacant possession is required to successfully deal with the bed bug infestation. They said that the tenant returning their items into the rental unit may likely reintroduce bed bugs into the suite.

The tenant confirmed receipt of the landlord's 1 Month Notice on February 8, 2021 and filed their application for dispute resolution on February 18, 2021. The tenant said that the portion of their application seeking an order of compliance pertains to some payments they have made to the landlord during the course of this tenancy.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that:

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;*
- *put the landlord's property at significant risk.*

Based on the totality of the evidence I find the landlord has not met their evidentiary burden on a balance of probabilities to establish that there is cause for this tenancy to end. Bed bugs can enter a property by any number of ways. The presence of bed bugs in a suite is not evidence that the occupant of that suite has allowed the bed bugs to enter or multiply.

I find the evidence of the landlord to be insufficient to establish that the tenant's conduct is such that they are the cause of the pest issue. I find the tenant's testimony that they limited their use of personal possessions as instructed to be believable and reasonable. I am not satisfied that the tenant's conduct is such that they are causing significant interference with others, seriously jeopardizing health or safety or placing the property at risk.

While I understand the frustration of the landlord who has made multiple attempts to resolve the bed bug issue in the rental building, I am not satisfied that the tenant has caused or through their negligence or action have allowed the situation to exacerbate. I understand that the landlord has been advised that items in a rental unit may be a source of bed bugs but I am not satisfied with the landlord's evidence that the tenant is maintaining their rental unit in such a state that bed bugs are inevitable.

Taken in its entirety I find the evidence of the landlord does not meet their onus on a balance of probabilities. I am not satisfied that the tenant has engaged in conduct that gives rise to a Notice to End Tenancy. Consequently, I allow the tenant's application and cancel the 1 Month Notice. This tenancy continues until ended in accordance with the Act.

I find insufficient evidence in support of the portion of the tenant's application pertaining to an order of compliance. While I accept the undisputed evidence of the tenant that some payments were made to the landlord during the tenancy, the parties did not make any submissions as to why these payments were made, what they were in regards to, or how the amount was calculated. I find the tenant has not met their evidentiary burden on a balance of probabilities to establish that there has been any breach on the part of the landlord that an order of compliance is appropriate. Accordingly, I dismiss this portion of the tenant's application without leave to reapply.

Conclusion

The tenant's application to cancel the 1 Month Notice is successful. The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The balance of the tenant's 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: May 25, 2021

Residential Tenancy Branch