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 **LRE, CNC, LAT, OLC, FFT**

Introduction

On January 13, 2021, an arbitrator of the Residential Tenancy Branch made a decision regarding an application filed by the tenant pursuant to the *Residential Tenancy Act* (the "*Act*") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

On April 9, 2021, pursuant to section 7 of the *Judicial Review Procedure Act, R.S.B.C. 1996, c. 241,* the Hon. Justice A. Ross ordered that the decision of that arbitrator be set aside and remitted to the Residential Tenancy Branch for a new hearing.

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

- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- Authorization to change the locks to the rental unit pursuant to section 31;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord was represented by legal counsel, OM and the landlord's witness, ML. As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and confirmed receipt of the tenant's evidence, including evidence provided less than 7 days ago. Landlord's

counsel advised he was willing to admit all of the tenant's evidence despite it being served contrary to rule 3 of the rules of procedure. All of the tenant's documentary evidence was admitted for consideration for this hearing. Likewise, the tenant acknowledged service of the landlord's evidence and pointed out she filed documentation to substantiate it. All of the landlord's documentary evidence was admitted for consideration for this hearing.

Preliminary Issues

At the commencement of the hearing, the tenant advised that she had misnamed the respondents as the property manager and the owner of her building. The tenant sought to amend her application to reflect the property management company representing the landlord and the landlord's counsel advised that the company would be the proper respondent for this proceeding. In accordance with section 64(3) of the *Act* and rule 4.2 of the Residential Tenancy Branch rules of procedure, the landlord's name was amended to replace the name of the property manager and owner to the property to the property management name shown on the cover page of this decision.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. I determined the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy ("Notice") was the primary issue for me to decide and I dismissed the remainder of the tenant's application with leave to reapply at the commencement of the hearing. The application seeking to recover the filing fee will be exempt from dismissal and will be determined in this decision.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.
A copy of the tenancy agreement was provided as evidence. The tenancy began on May 1, 1994. The tenant has been living in the rental unit for more than 27 years. The tenant lives on the second floor of the building.

The landlord's counsel referred me to a 68-page binder of documents for his submission, referring to specific pages in it for reference. He called ML, the property manager for the building at the time the notice to end tenancy was issued to testify. The property manager confirmed she no longer manages the building but that on the 1st of October, 2020 she got a complaint from a resident that there are bedbugs in the building. She immediately contacted Orkin, a pest control company to attend, giving the 9 units directly adjacent to the unit 24 hours notice of an inspection. The property manager testified she used Orkin because they have been the building's pest control contact for years and she has used Orkin many times in other buildings for years. She has found Orkin to have a good reputation in the pest control field.

On October 8, 2020, Orkin conducted an inspection and found live bed bugs (adults, nymphs and eggs) and evidence of bedbugs (dead bugs, cast skins, fecal spots, egg casings) in the original complainant's unit located directly above the tenant's. Orkin's canine also made a positive alert for bedbugs in that unit. Orkin inspected the remaining adjacent units to the original complainant and found no evidence of bedbugs in any of those units with the exception of the unit occupied by the tenant in this proceeding.

A copy of Orkin's "Bed Bug Inspection Report" done on October 8, 2020 was provided as evidence. In the report, for this tenant's unit, Orkin's canine made a positive alert for the presence of bedbugs, alerting the handler to the underside of the box spring in the bedroom. No live bugs were found as the report writer indicates he was *"unable to see live bugs as the inspection proved to be difficult due to cluttered conditions."* The report continues on, saying evidence of bed bugs was found in the tenant's unit, (dead bugs, cast skins, fecal spots, egg casings) and that fecal spotting was noted on the bedding, particularly on the comforter of the queen bed.

At the end of Orkin's report, the report writer indicates:

> *[tenant's unit] 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.*

On October 9, the property manager emailed the tenant advising Orkin will return the following Wednesday, October 14th between 9 and 5 to proceed with heat treatment for bedbugs in the tenant's unit and the one above her.

The tenant responded to email on October 13th stating she does not have a bed bug infestation problem. In this email, the tenant requests confirmation no one will be entering her unit on Wednesday, October 14th or any other day to do a heat treatment for a non-existent bed bug infestation. On October 14th, the tenant refused access to Orkin and the property manager.

The property manager testified that on October 15th, she emailed the tenant asking to come the following Monday for a heat treatment. The tenant responded to the email stating she will not permit entry to her unit on Monday and in capital letters indicates I DO NOT HAVE BED BUG INFESTATION.

On October 16th the landlord served the tenant with a One Month Notice to End Tenancy for Cause which the tenant acknowledges receiving on that date. The reason for ending the tenancy stated on the notice reads:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

2. the 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;

3. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

Under details of cause, the landlord writes:

> *Bedbugs have been found in this unit and an adjoining unit. This has been confirmed by Orkin who did an inspection on Oct 8, 2020. 9 units were tested by k9 in total. and 2 tested positive. I have given this tenant a Notice of Entry by email and a 24 hour notice, posted on the door, for the pest control company to attend and do a heat treatment on Oct 14th. The tenant has refused to let anyone in her unit to do the heat treatment or the chemical treatment. I rescheduled the treatment for Oct 19, 2020 and posted a Notice of Entry on the door on Oct 14, 2020. There are currently 2 units identified as having bedbugs and I need to stop this before they spread to other units. Tenant is insisting that there are no bedbugs in the unit but the professional report from Orkin states otherwise. Tenant has responded by email, clearly stating that she will not be allowing entry to her unit. I also spoke with her through her door as she would not answer - and she verbally told me she would not be allowing entry at any time.*

The landlord submits that every time they made attempts to treat the bedbugs, the tenant stopped them at every turn. It was imperative that they treat this tenant's unit as simply treating the unit above hers would not eradicate the problem. The denial of entry into the tenant's unit and refusal to allow Orkin to inspect or treat for bedbugs compromises the landlord's obligation to keep the building safe for all occupants of the building.

The tenant gave the following testimony. The property manager and the landlord are motivated to end this tenant's tenancy because the tenant pays below market rate for the rental, having been a tenant there for over 27 years. The units adjacent to the "original complainant's" unit were either newly occupied with high paying renters, or vacant. Of the 9 adjacent units, only the tenant's unit is below market rent.

The tenant drew my attention to two documents during her testimony, the 15-page letter dated August 11, 2021 and another document she called "affidavit 26". No other specific documents were presented during the tenant's testimony, although the tenant supplied over 900 pages of evidence for this hearing.

The tenant testified that there is no bed bug infestation problem in her unit or the one above hers. The tenant has spoken to the tenant living above her and he denied having bugs. Regarding her own unit, she would not knowingly live with bedbugs in her unit, she would want them taken care of if there were any. There simply aren't any in her unit and there is no evidence of an infestation from Orkin or any other inspector.

Following Orkin's inspection, she had one done on her own, 10 days later and another one by city hall another 12 days later. (The tenant did not direct my attention to any reports during testimony.) "They" ripped apart the tenant's bedding looking everywhere for bedbugs. (the tenant did not specify who she was referring to). The tenant doesn't know how much money she has to spend or what else to try to convince the landlord there are no bugs in her unit. The tenant even went to the doctor to have her body inspected for bites from bedbugs and none were found.

The tenant argues that Orkin was willing to break the law in doing chemical treatments where none is warranted. Orkin's canine handler didn't do a visual inspection of what the canine alerted him to, failing to follow protocols. The "fecal spots" seen by the Orkin representative were actually mascara stains on her comforter.

The tenant alleges that property manager ML lied on the notice to end tenancy document; she knew it was not the truth and knew there were no supporting reports from professionals confirming the serious allegations against her. The tenant alleges ML tampered with the Orkin report by supplying only certain pages to her and concealing the rest. ML also made it appear the tenant had bedbugs by framing questions as fact in the Orkin report. The tenant referred me to what she called "affidavit 26" to corroborate this argument, however there is no document entitled "affidavit 26" in the tenant's documentary material.

Analysis

The parties agree the tenant received the landlord's One Month Notice to End Tenancy for Cause on October 16, 2021. I deem it served on that day pursuant to sections 88 and 90 of the *Act*. The tenant filed an application to dispute the notice the following day, on October 17th, well within the 10 day timeframe as required under section 47.

Rule 6.6 of the Residential Tenancy Branch rules of procedure state the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. 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.

Section 32(1) of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

a) complies with the health, safety and housing standards required by law, and
b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In other words, under section 32, a landlord is required by the *Act* to ensure that all of the tenants in the building enjoy a safe and healthy environment. As part of the landlord's obligations under the *Act*, the landlord would be required to ensure the building remains free of bedbugs.

I accept the landlord's assertion that they were advised by the occupant of the unit above the tenant that he had bedbugs. It would be reasonable for that occupant to tell the landlord in order to put the landlord on notice that the landlord must exercise their duty under section 32 of the *Act*. I do not accept the tenant's version that the occupant above her did not have bedbugs since a) she did not call that occupant as a witness or provide a statement from him; b) the Orkin report clearly indicates the unit above the tenant's was inspected, found positive and treated.

Further I am not swayed by the tenant's argument that the motivation for seeking entry into her unit was to ultimately to evict the tenant. Nowhere in the material do I find any evidence to corroborate this argument. In reviewing the email exchanges between the parties from early October 2020 to the October 16th I find the property manager's primary goal is to gain access to the unit to either have Orkin perform a thorough inspection of the unit for bedbugs or to rid the unit of bedbugs based on the incomplete inspection done on October 8th. I view the landlord was motivated to eradicate the bedbugs, not to evict the tenant.

The tenant did not provide a sufficiently reasonable motive for not allowing Orkin access to her unit although she stated that doing heat treatments and chemical treatments would be illegal where bugs are not present. Once again, I find the tenant's reasoning for this strains credibility since the tenant offered no potential

detrimental effects to the heat treatment (which Orkin recommended). Chemical treatment was offered when heat treatment could not be done.

In determining whether I should uphold or cancel the landlord's notice to end tenancy, I find whether the tenant did or did not have bedbugs at the time the landlord was trying to investigate and eradicate them is peripheral to the actual issue of whether the tenant has significantly interfered with the landlord's ability to safeguard the health and safety of the other occupants of the building.

Based on the evidence before me, I believe the landlord had reasonable grounds to believe there were bedbugs in the tenant's unit. I accept the validity of the Orkin report and the statements made therein. Despite the tenant's misgivings, I find no legitimate reason to discount any of the statement made by the Orkin technician whose profession requires an expert ability to determine the presence or evidence of bedbugs. I find no reason for the technician to have lied when she states that the tenant was uncooperative, interrupted the inspection and distracted the canine when the technician tried to perform the inspection on October 8th. Further, I find it reasonable that if bedbugs are discovered in the unit above and dead bugs, cast skins, fecal spots and egg casings of bedbugs are discovered in the unit directly below, it is more than likely the unit below has them too.

The property manager, I find, had legitimate, reasonable grounds to believe there existed in the tenant's unit a threat to the health and safety of the other occupants in the building. The tenant's actions in denying the landlord access to her unit to do a proper inspection or eradicate the bedbugs does constitute an action which puts the landlord's property at significant risk. I accept the landlord's reasoning that if the unit remained untreated that the infestation could spread to other units in the building. Once again, the landlord is responsible for maintaining the property in a state of decoration and repair that complies with health, safety and housing standards required by law pursuant to section 32. Denying the landlord the ability to eliminate the bugs, or at the very least, allow a reputable pest control company access to her unit to look for them forces the landlord to contravene section 32 of the *Act*. For these reasons, I uphold the landlord's One Month Notice to End Tenancy for Cause issued on October 16, 2020 and I dismiss the tenant's application to dispute it without leave to reapply.

Section 55 states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy

complies with section 52 *[form and content of notice to end tenancy]*. I have examined the notice to end tenancy and find it complies with form and content provisions. Since the effective date on the notice to end tenancy has passed, I grant the landlord an order of possession effective 2 days after service upon the tenant.

As the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: August 29, 2021

Residential Tenancy Branch