



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order restricting the Landlord’s entry - Section 70; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that they did not receive the Landlord’s evidence. The Landlord states that they served the Tenant with their evidence package by registered mail on September 21, 2021. The Landlord confirms that the package contains reports and photos dated prior to May 31, 2021. It is noted that the hearing date for this dispute is October 1, 2021.

Rule 3.15 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure provides that evidence must be provided to the other party and the RTB no later than 7 days before the hearing date. Section 90(a) of the Act provides that a document if given or served by mail is deemed to be received on the fifth day after it is mailed. Based on the Landlord’s evidence of the date it sent the evidence package I find that the Tenant is

deemed to have received the package on September 26, 2021. However, this delivery date is past the 7 days allowed for final evidence and further, as the Landlord's evidence was available well in advance of the hearing, I consider that the Landlord unreasonably delayed the provision of their evidence to the Tenant. For these reasons I decline to consider the Landlord's documentary and digital evidence.

Rule 2.3 of the RTB Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim to restrict the Landlord's entry is not related to the matter of whether the tenancy will end, I dismiss the claim with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 1, 2016. At the outset of the tenancy the Landlord collected \$382.50 as a security deposit and \$150.00 as a pet deposit. Subsidized rent of \$375.00 is payable on the first day of each month. The tenancy agreement has no pet restrictions other than for dogs. On May 31, 2021 the Tenant received a one month notice to end tenancy for cause dated May 31, 2021 (the "Notice"). The Notice sets out an effective date of June 30, 2021 and states for its reason that the tenant or person permitted on the property by the tenant has:

- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk.

The Notice sets out details in relation to bedbugs and a fish tank.

The Landlord states that on April 30, 2021 the tenant's fish tank caused a crack in the ceiling of the unit below. The Landlord also states that they do not know if the tank caused the crack.

The Landlord states that in 2018 bedbugs first appeared in several units in the building. The Landlord thinks the bugs started in the Tenant's unit because the Tenant has so many things. On April 29, 2021 the tenants in 407, the next-door unit, reported the presence of bed bugs. The Landlord believes that they came from the unit because the bugs appeared from an electrical outlet on an adjoining wall with the unit. The Landlord states that a lower unit 301 also reported bugs at the time. The Landlord states that in April 2021 the tenants in unit 407 did not have the unit treated by a pest control company because they had cats in the unit. The Landlord states that unit 407 did their own treatment of the unit by use of their own used sprays. The Landlord states that all of the units including the Tenant's unit was inspected for bedbugs on May 6, 2021. The Landlord states that only the tenants in unit 403 refused to allow the inspection.

The Landlord states that on May 6, 2021 the pest control found the unit too cluttered to do an effective treatment and that the Tenant was verbally informed that a second treatment was scheduled for May 20, 2021. On May 20, 2021 the Tenant refused entry to the pest company because the Tenant had not been given a written notice. The Landlord subsequently gave the Tenant a notice for the second treatment to occur on June 3, 2021. The treatment occurred on this date however the company advised that they could not do a proper treatment and would not guarantee the effectiveness of the treatment. The Tenant was told to clean the unit to a better shape but upon return on July 12, 2021 the unit was still in the same cluttered shape. The Landlord states that no further treatments were scheduled as the pest company had said they would not return until the unit was clean. The Landlord argues that the Tenant is making the infestation

worse by not allowing the unit to be treated and by having a cluttered unit when the pest company attends for treatment.

The Tenant states that on April 30, 2021 the Tenant was in the process of undertaking a major cleaning of the unit and that it was messier than usual at the time. The Tenant states that the Landlord took photos of the unit on that date without the Tenant's permission or knowledge and argues that the Landlord breached the Tenant's right to privacy by this act. The Tenant states that on May 3, 2021 when the Landlord complained to the Tenant about the fish tank and garbage being thrown out the Tenant agreed to pay any costs and the fish tank was removed immediately.

The Tenant states that there has been a substantial turnover of managers for the Landlord and while the Tenant previously received written notices for any entries, this practice ceased with a new manager during the winter of 2020 and the spring of 2021. The new manager only posted a general notice in the elevator indicating entries of various units, including the Tenant's unit "tomorrow". The Tenant states that other neighbours informed the Tenant of when that notice was placed in the elevator and that the entry would occur on May 6, 2021. The Tenant states that the unit was prepared for this entry and the unit was treated on this date. The Tenant states that they heard "by word of mouth" that there was to be a follow-up treatment on May 13, 2021. The Tenant states that there was no written notice for this entry. Nonetheless the Tenant prepared the unit and was out of the unit on this date. The Tenant states that other tenants informed the Tenant that the Tenant would need to be out of the unit for several hours for the treatment. The Tenant states that the pest control company did not come until May 20, 2021 and that there had been no notice of this entry provided. The Tenant did not allow entry on this date for the treatment as the Tenant had not been able to prepare for the treatment and to arrange for the removal of herself and the cats.

The Tenant received a "little note handwritten" for entry on June 3, 2021 and that this entry and treatment occurred on that date. The Tenant states that they have never

received any warning or notice of clutter from the Landlord and that the photos supplied by the Tenant as evidence for this dispute show the typical tidy state of the unit. The Tenant states that they were informed on a final inspection of July 12, 2021 that no live bugs were found. The building has a long history of bedbug infestation. The Tenant states that they have always cooperated with entries for bedbug treatments other than the once instance where no notice was given, and the Tenant was not prepared.

The Tenant's Witness, an employee with a housing agency, states that between May 1 and May 6, 2021 the Witness was helping the Tenant undertake a major clean and organization of the unit. The Witness states that the organization was done to provide space for a table that the Tenant wanted. The Witness states that the Tenant had this goal for some time however because of COVID they were unable to start before May 2021. The Witness also states that whenever the Tenant received notices of entry for bedbug treatments the Witness would help the Tenant prepare.

The Landlord states that they do not believe the Witness and never saw anybody cleaning the unit or what kind of job was being done.

Analysis

Section 47(1)(d) of the Act provides, inter alia, that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- put the landlord's property at significant risk.

As there is nothing in the tenancy agreement that prevents the Tenant from having fish or a fish tank, as the Landlord has given inconsistent evidence that the fish tank was the cause of any damage and given the undisputed evidence that the tank was removed

immediately upon request by the Landlord, I find that the Landlord has not substantiated that the Tenant caused any serious jeopardy or risk to the Landlord, other tenants or the Landlord's property. I find therefore that the Notice is not valid for this reason.

It is undisputed that the building has a long-standing history of bedbugs. The Landlord's evidence is that no professional company was brought in to treat the bedbugs in the adjacent unit before the Notice was given to the Tenant. It is unknown whether this unit has subsequently received any professional inspections or follow-up professional treatment. There is evidence that other units were also infested at the time the Notice was given to the Tenant. This contextual evidence raises a question on the effectiveness of professional pest control treatment in any unit. There is no evidence that either before or following receipt of the Notice the Tenant did not cooperate with entries for bedbug treatment or inspections upon receipt of a written notice of such entry. For these reasons, as the Landlord has not provided any supporting evidence that any of the treatments were ineffective due to the state of the Tenant's unit and given the undisputed evidence that no live bugs were found in the unit on the inspection of July 12, 2021, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused any serious jeopardy or risk to Landlord, other tenants or the Landlord's property. I find therefore that the Notice is not valid for this reason.

As the Landlord has not substantiated any reason for the tenancy to end, I find that the Notice is not valid for its reasons and that the Tenant is entitled to its cancellation. The tenancy therefore continues. As the Tenant has been successful in cancelling the Notice, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: October 06, 2021

Residential Tenancy Branch