



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act.

The hearing was conducted via teleconference. The Building Manager, DL, and the Landlord's Agent, AD, attended the hearing at the appointed date and time. The Tenants, AP and DL, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenants with the One Month Notice on November 1, 2021 by posting it on the Tenants' door. The Tenants confirmed receipt of the One Month Notice. I find this One Month Notice was deemed served on November 4, 2021 according to Sections 88(g) and 90(c) of the Act.

The Tenants personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 5, 2021 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was served with the NoDRP package for this hearing on November 5, 2021, in accordance with Section 89(1)(a) of the Act.

The Landlord served their evidence on the Tenants by Canada Post registered mail on December 8, 2021. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenants were deemed served with the evidence for this hearing five days after mailing them, on December 13, 2021, in accordance with Sections 88(c) and 90(a) the Act.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's One Month Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This tenancy began as a fixed term tenancy on September 1, 2018 and ending on September 1, 2019. After this fixed term, the tenancy continued on a month-to-month basis. Monthly rent is \$1,015.00 payable on the first day of each month. A security deposit of \$500.00 was collected at the start of the tenancy, then when the Tenants got a cat, a pet damage deposit of \$200.00 was collected. Both deposits are still held by the Landlord in trust.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenants or a person permitted on the property by the Tenants has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord and has put the Landlord's property at significant risk. The effective date of the One Month Notice was December 31, 2021.

The Landlord testified that the Tenants' unit is very unsanitary, and the guinea pig pens, and rat cages contribute to the untidiness. There is also a bed bug problem, which has been an ongoing issue. AD stated one day the Tenants called the Landlord because they thought they left their stove on and they asked the Landlord if they would go in and check it. AD testified when they went in to check whether the stove was left on, they also took pictures of the state of the rental unit. Some of the photos uploaded into evidence are also from the pest control company, which was brought in to deal with the

bed bugs. The Landlord noted on their pictures submitted into documentary evidence, that some photos were taken by the pest control company, while others dated October 31, 2021 were taken by the Landlord. The Landlord said the state of the Tenants' rental unit is unacceptable. AD maintained that treating the Tenants' rental unit is wasting their time, as they share a wall, floor and ceiling with neighbouring rental units, and the clutter, lack of sanitization and other lack of preparation for the pest control company's treatment is wasting the Landlord's money.

The Landlord's Witness, ML, from the pest control company said bed bugs love clutter. When the pest control company treats the affected unit, bed bugs will hide in the clutter for several weeks at a time. This is the reason that the clutter must be cleared up. The treatment plan consists of:

1. 1st treatment - Steam & chemical (this treatment does not kill the eggs)
2. Wait two weeks
3. 2nd treatment - Steam & dust

When the pest control company came in, they determined that the Tenants had not properly prepared their rental unit for treatment. A February 26, 2021 report from the pest control company said:

221 – TEMPRID bed bug treatment – 2 bdrm. Major sanitation required and only partial prep completed. Floors not vacuumed, lots of items on the toddler bed, clothes piled on top of the dressers, small items (mainly toys) under furniture. Treatment applied where accessible. Follow up treatment required – 2 weeks. Full prep and cleaning required prior to service. Inspection of surrounding units recommended.

The pest control company came back on March 15, 2021 for the second treatment, but they cancelled the treatment service due to the lack of preparation in the rental unit. On March 26, 2021, the pest control company returned, noting the preparation work was excellent, so they proceeded with the second treatment.

On June 17, 2021, the pest control company inspected the rental unit. The Tenants reported finding one live bed bug and one dead bed bug, but no evidence was provided to the pest control company. The pest control company reported there were many cluttered areas, and that general cleaning throughout was needed.

On August 27, 2021, the pest control company did a follow up inspection. They reported that sanitation remains poor. The Tenants reported more bites, and a cast skin was found on the underside of the couch. The pest control company determined follow up treatment is required, however, full preparation and sanitation is required prior to service.

On September 17, 2021, the Landlord wrote the Tenants giving the Tenants until September 30, 2021 to clean every room, vacuum/mop, have laundry cleaned and put away, and declutter the patio. All these items needed to be taken care of before another bed bug treatment appointment would be booked.

On October 22, 2021, the pest control company was prepared to treat the rental unit, but Tenant DL did not have anywhere to relocate his pets and himself on that date. The pest control company has not been called out again and the One Month Notice was issued.

The Tenant AP testified that the guinea pigs are no longer in the rental unit. They still have the rats. She stated they have steamed cleaned the carpet and said they have a friend who has a cleaning service, and this friend comes in once per week. AP stated that the cleaning service tidies up the rental unit, washes dishes and does laundry. AP testified that she finds it easier to keep up with the general cleaning now since using the service provided by the friend.

Tenant DL testified angrily about the pictures taken inside his home. He feels these pictures are inflammatory compared to how he and AP are now maintaining the home. He stated that the Landlord has not come to inspect their unit recently or asked if they need more assistance with the bed bug infestation.

AP said they did let the place go, but since receiving the One Month Notice, they have maintained a clean household. The Tenants also testified since receiving the One Month Notice in November, the pest control company has not come to inspect or treat their rental unit. The Tenants said they are still experiencing bites from bed bugs and they want the pest control company to come in and treat their unit.

The Landlord said further treatment dates are postponed following the outcome of the RTB Decision.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this application. It states:

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*
- ...
- (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;*

Section 28(a) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy. The Tenants called the Landlord because of a possible situation where they may have left their stove on. The Landlord agreed to check, but then used that opportunity to take pictures inside the Tenants' rental unit. I find this is a breach of the Tenants' right to reasonable privacy, and the Landlord is ordered not to take pictures inside the Tenants' rental unit without the Tenants' explicit authorization.

Section 32 of the Act sets out the obligations of landlords and tenants to repair and maintain rental units. Section 32(1) of the Act states a landlord must provide and maintain residential property 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, makes it suitable for occupation by a tenant. Residential Tenancy Policy Guideline #1 discusses Landlord and Tenant – Responsibility for Residential Premises. Tenants must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit pursuant to Section 32(2) of the Act. The Landlord is responsible to ensure that rental units and property meet “health, safety and housing standards”. Therefore, I find that the Landlord is responsible

for ensuring the health and safety of the unit which includes completing the bed bug treatment.

The Tenants have now been alerted as to how serious the consequences can be if they are not diligent in maintaining reasonable health, cleanliness and sanitary standards in their rental unit. Tenant AP has coordinated assistance for maintaining the cleanliness and sanitary conditions in the home, and this input has helped her manage these tasks. I commend this effort and encourage both Tenants to not let this fall by the wayside.

The Landlord cannot put on hold the health, safety and housing standard protocols that are their responsibility. I find stopping any progress in treating this bed bug infestation breaches the Landlord's responsibility to the Tenants to provide and maintain the residential property in a state of decoration and repair that complies with health and safety standards. The Landlord's Agent AD said herself that the Tenants' rental unit shares a wall, floor and ceiling with surrounding occupants and the Landlord must treat this bed bug infestation to make it suitable for occupation by the Tenants.

Based on the testimony of all the parties, I do not find that the Tenants have seriously jeopardized the health or safety or a lawful right or interest of the Landlord or other occupants. In fact, I find the opposite, by the Landlord in not organizing the pest control company to treat the Tenants' unit, and instead waiting for an RTB Decision on the matter, this is irresponsible. Nothing in the Landlord's evidence assists me in finding that the Tenants have put the Landlord's property at significant risk. I find that the Tenants have, on a balance of probabilities, proven that there is no cause to end this tenancy. I cancel the Landlord's One Month Notice. This tenancy shall continue until ended in accordance with the Act.

Conclusion

The Tenants' application to dismiss the Landlord's One Month Notice is granted.

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

Dated: January 18, 2022

Residential Tenancy Branch