



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 tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

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 tenant was assisted by an advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's application and evidentiary materials. The tenant testified that they refused to accept service of the landlord's evidentiary materials which was delivered by registered mail on December 17, 2021. Based on the testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act* and the tenant deemed served with the landlord's evidence on December 22, 2021 in accordance with sections 88 and 90. I note that as delineated in Residential Tenancy Policy Guideline 12 the refusal or failure of a party to pick up documents served by registered mail does not override the deeming provisions 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?

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.

The parties agree on the following facts. This periodic tenancy began over 40 years ago. The current landlord assumed this tenancy when the rental property was purchased. The present monthly rent is \$1,046.00 payable on the first of the month. The rental unit is a suite in a multi-unit building with 8 units.

The parties agree that there has been ongoing issues of bedbug infestation in the rental building since approximately 2017. The landlord submits that throughout the course of the tenancy the tenants have failed to provide meaningful cooperation with pest control services and have allowed bedbugs to resurge from their rental unit several times. The landlord submits that despite periodic treatment the tenants allow the bedbugs to survive by failing to keep their rental unit in a reasonable state of cleanliness, failing to launder clothing and bedding properly, and failing to maintain a level of hygiene necessary to prevent bedbugs.

The landlord submitted into evidence reports from the third-party pest control services who have attended the rental property several times over the past years. The reports conclude that the source of bedbugs is the rental unit and that they can be eliminated through measures including full access for treatment, regular laundering, keeping personal possessions in sealed containers and maintaining physical hygiene. The landlord submitted photographs of the rental unit as evidence of its condition.

The landlord submits that the tenants' failure to comply with the recommendations of the pest control professionals has caused the bedbug issue to recur several times over the past five years. The landlord provided that in each instance pest control services were called and there have been difficulties in gaining access to the rental unit to perform proper treatment. The landlord characterizes the tenants as being uncooperative and sometimes hostile to the landlord and their agents. The landlord testified that the

tenants have yelled at them on several occasions. The reports from the pest control company also notes several instances of the tenant making verbal complaints or yelling.

The landlord submits that the bedbugs breed in the rental unit and venture outwards into other units and the common areas of the building. The landlord testified that the occupants of the two neighboring units have vacated and the suites now remain empty as the landlord feels the presence of bedbugs makes them unsuitable for occupation.

The landlord issued the present 1 Month Notice dated August 26, 2021 listing the reasons for the tenancy to end as:

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;*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

The tenants dispute that they have yelled explaining that they may have raised their voice but never in a threatening or hostile manner. The tenants submit that they have taken reasonable steps to comply with the landlord's recommendations and have disposed of many personal items and have tidied their suite.

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 the tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health or safety or

lawful right of another occupant, put the property at significant risk or have caused extraordinary damage to the unit or property.

Based on the totality of the evidence, I am unable to find, on a balance of probabilities, that the landlord has established sufficient cause for ending this tenancy. While it is clear that there have been ongoing issues with this tenancy, I am unable to find that the cumulative incidents and issues cited rise to the level of being accurately characterized as significant interference, a serious jeopardy, or extraordinary damage.

I find that bed bug infestation may be intrusive and unpleasant but their presence cannot be reasonably considered to put the property at significant risk or cause damage. Similarly, I do not find that the accumulation of personal property and items in the rental unit to be at a level that would reasonably be noted as a risk to the property. Based on the evidence of the landlord including photographs and testimonies the rental unit is navigable and while there is a considerable amount of items, I find little evidence that there is a risk of fire or other hazards. The central point of the landlord's objection to the state of the rental unit is that the items prevents and has prevented the third-party pest control services from performing a full treatment against bedbugs and inspecting all areas of the suite. While I find that the accumulation of items may make it difficult for pest control services or to prevent further instances of infestation, I am not satisfied that there has been or that there is a risk of damage to the rental property.

The evidence of the landlord includes information from the Government of Canada regarding bedbugs. The information states "Bedbugs are no known to spread disease and their bites do not generally require medical attention". The information states that in rare cases some people may have severe allergic reactions to bites or that there may be negative impact on mental health from residing in homes with infestations. Based on the information before me I am unable to find that the bedbug situation seriously jeopardizes health or safety or lawful rights of the landlord or others.

I find insufficient evidence to support the landlord's characterization of the tenants as significantly interfering with or unreasonably disturbing others. I am not satisfied based on the disputed testimonies that the conduct of the tenants rise to the level of forming a basis for an end of tenancy. A handful of instances of hostile interactions and raised voices are insufficient to be characterized as unreasonable or significant. The evidence of the landlord is that the tenants were present during pest control treatment to complain and yell. While the tenants would be well advised to maintain civility in their interactions I find the instances cited to be insufficient to establish a basis for the end of a tenancy.

Based on the totality of the evidence while I find that there are bedbugs in the rental building and they have previously flourished in the tenant's suite, I find that the tenants have made cursory attempts to modify their behaviour and allow for the landlord's agents to treat the infestation of bedbugs. I find the tenant's level of cooperation during the past years to be reasonable, especially in light of the ongoing pandemic and the age and health of one of the tenants. While I find that the tenants cooperation was reluctant and begrudgingly given, I find their past actions cannot be considered to be an unreasonable disturbance or interference with others.

I find that the landlord has not met their evidentiary burden to establish that there is a basis for the 1 Month Notice. Consequently, I allow the tenants' application and cancel the notice of August 26, 2021. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The tenant's application is successful. This tenancy continues until ended in accordance with the *Act*.

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: January 11, 2022

Residential Tenancy Branch