



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC**

Introduction

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

1. 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; and,
2. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord, RT, and the Tenant, KR, 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 personally served the One Month Notice on the Tenants on October 31, 2021 with a witness. The Landlord provided a proof of service for the One Month Notice. Tenant KR confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenants on October 31, 2021 pursuant to Section 88(a) of the Act. The Landlord personally served his evidence package on the Tenants on January 6, 2022. Tenant KR confirmed receipt of the Landlord's evidence package. I find the Landlord's evidence package was served on the Tenants pursuant to Section 88(a) of the Act.

The Notice of Dispute Resolution Proceeding package for this hearing was issued to the Tenants on November 9, 2021 (the “NoDRP package”). The Tenant served the NoDRP package by posting the notice on the Landlord’s door. The Landlord stated the NoDRP package was slid under his door, but confirmed receipt. I find that the Landlord was sufficiently served with the NoDRP package for this hearing on November 12, 2021, in accordance with Section 71(2)(b) of the Act. The Landlord was not served with the Tenants’ evidence package, so the four pictures uploaded on the RTB website will not be considered in this matter.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord’s One Month Notice?
2. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?
3. 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 periodic tenancy began on May 15, 2015. Monthly rent is \$800.00 payable on the first day of each month. A security deposit of \$400.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenants 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; and the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property. The Landlord provided further details:

Due to the infestation of Bed Bugs in their suite, the tenants were given a Bed Bug treatment preparations sheet and notice to enter for treatment on Sept 9, 2021 and then Sept 20, 2021. The tenants failed to prepare for treatments on both dates. On Sept 20, 2021 the technician from [pest control

company] was re-inspecting their suite and she was set upon with anger, hostility, swearing, and was blocked from leaving the tenant's bedroom for some time. A police file of this incident was made by the technician's employer but no charges were laid, file #21-37117. After this incident, the technician and [pest control company] is refusing to treat their suite while they are in it. If the tenants will not properly prepare for Bed Bug treatment while infested when 2 chances were given, and the pest control company will not treat their suite due to the horrible treatment to their Technician, then we need possession of their suite as soon as possible.

The Landlord testified that the Tenants' rental unit was treated before for bed bugs in October 2018. The Landlord agreed they were responsible to treat the bed bug infestation, and it certainly was more than one unit that needed the treatment. On September 9, 2021, the pest control company invoiced the Landlord for bed bug treatment to suites 102, 103, 104, 203, 205 and 305. On September 20, 2021, the pest control company invoiced the Landlord for bed bug treatment to suites 105 and 205.

Several weeks before the scheduled treatment, the Landlord provided the Tenants with a preparation sheet with instructions on what was needed from them to prepare the rental unit for bed bug treatment. When the pest control company came in to work on the rental unit, they determined that preparation was not completed or not sufficient to allow them to do their required work. The space between the baseboards and the bedroom furniture was 6" to 12"; however, 24" is required to efficiently do the work.

On the second scheduled appointment date, the Tenants' rental unit was still not ready for treatment. KR asked the pest control company technician to come back to their suite after she had completed the other rental units. The technician did return, but again determined that the rental unit was not properly prepared. Tenant BN was verbally abusive to the technician, blocked her exit out of the bedroom and now she refuses to return to that rental unit.

The Landlord testified that this pest control company uses a new fungal product that no other company in town offers. He also stated they get good rates with this pest control company and he questions why he should go to another company for this work. The Landlord pointed to the reasons in the Tenants' application for dispute resolution for them wanting to remain in the rental unit just for a short period of time: *'We need time to dispose of a bed bug infestation, so we don't spread the infestation to our new home.'*

KR submits that no criminal charges have been laid on her partner. KR points to Section 279.1(1) Hostage taking of the Criminal Code (R.S.C., 1985, c. C-46), but the police, she stated, said the call was put in 2 days after the event and they said there is no validity in the report. KR does not agree that they have 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. KR testified that they are actively looking for alternative housing, but they need to get rid of the bed bugs before they leave.

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;*

(e) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*

(i) *has caused or is likely to cause damage to the landlord's property,*

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.

Preparation is key to successful results for bed bug eradication. The pest control company's instructions for preparation need to be adhered to otherwise access to areas is restricted and treatment would not be effective. The pest control company's technician's decision that treatment would not happen was made due to a lack of preparation in the rental unit. Threatening conduct by the Tenant is not called for and left the technician to reasonably fear for her safety. This can be characterized as an illegal activity.

Residential Tenancy Policy Guideline #32 provides a policy intent of what constitutes Illegal Activities under the legislation. It reads in part:

Illegal activities include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw. In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

KR pointed to hostage taking provisions of the Criminal Code, and stated these were unfounded, but less serious criminal offences compared to hostage taking, for instance uttering threats, intimidation or injury/damage feared may be considered here and are federal violations. The Landlord did not point me to any provisions of statutes illustrating illegal activities. The pest control company said they will not be sending their technician back into this rental unit as she is fearful for her safety unless the Tenants are gone.

I find that the Landlord cannot completely deal with the bed bug issue in the building if there is one unit that does not conform to the required preparation that needs to happen before a treatment can be done. The Landlord is employing a company with a unique treatment strategy and does not want to use the old treatment strategy that other

companies use. As a result, I find that the Landlord cannot ensure that the residential property's health, safety and housing standards conform with the legislative intent and the Tenants' lack of preparation and intimidation of the pest control company's technician amounts to behaviour that seriously jeopardizes the health or safety or a lawful right or interest of the landlord and the other occupants above, below and on either side of the Tenants, and puts the landlord's property at significant risk. I dismiss the Tenants' application in its entirety and specifically to cancel the One Month Notice without leave to re-apply.

I also find that the Landlord has, on a balance of probabilities, provided sufficient evidence to meet their burden of proof, and I uphold the Landlord's One Month Notice.

Section 55(1) of the *Act* reads as follows:

- 55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the *Act*. Based on my finding that I uphold the Landlord's One Month Notice, I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenants.

Conclusion

The Landlord is granted an Order of Possession pursuant to Section 55(1) of the *Act*, which will be effective two (2) days after service on the Tenants. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

The Tenants' application for dispute resolution is dismissed in its entirety.

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 17, 2022

Residential Tenancy Branch