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

This hearing, reconvened for the second time after two earlier decisions and two judicial review decisions remitting the matter back to the Residential Tenancy Branch for a new hearing, 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 1 Month Notice To End Tenancy for Cause (the "1 Month Notice") pursuant to sections 47;
- 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 landlord pursuant to section 72.

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 corporate landlord was represented by counsel and agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent

dispute resolution process parties were given a full opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks that were duplicated in their written submissions or not related to the matter at hand.

Residential Tenancy Branch Rule of Procedure 2.3 and 6.2 provides that claims must be related to each other and, at the Arbitrator's discretion, unrelated claims may be dismissed with or without leave to reapply. In the present circumstance I find the tenant's application for cancellation of the 1 Month Notice is the primary relief sought and the other claims are not sufficiently related. The parties confirmed that this was the primary issue and consented to the other issues being severed. Accordingly, I sever and dismiss all but the portion of the application seeking cancellation of the 1 Month Notice and recovery of the filing fee.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 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?
Is the tenant entitled to recover their filing fee from the landlord?

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 on May 1, 1994. The current monthly rent is $1,049.00 payable on the first of each month. The rental unit is a suite in a multi-unit building of approximately 46 units. The tenant was served with a 1 Month Notice dated October 16, 2020. The tenant filed an application to dispute the notice on October 17, 2020.

The reasons provided on the 1 Month Notice for the tenancy to end are:

> The 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; and
> - put the Landlord's property at significant risk

In the description of the cause the landlord writes:

> Bedbugs have been found in this unit and an adjoining unit. This has been confirmed by [the pest control company] 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 [the pest control company] 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's witness ML was the property manager for the rental building during the pertinent period. ML testified that in early October 2020 they received a complaint from an occupant of the rental building that there were bed bugs in their suite. ML contacted a third-party pest control company to attend at the rental property and inspect the unit of the complainant as well as 9 other units located above, below or adjacent to that unit. The tenant's rental unit was one of the 9 units.

The third-party company conducted an inspection of the rental property and provided an Inspection Report dated October 8, 2020. The report notes that the pest control technician and a search dog attended in the rental unit and provides:

> [The rental unit] was impossible to inspect thoroughly. The tenant was uncooperative and repeatedly interrupted the inspection and caused distraction for the canine. 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 we would be done. As a result, we were unable to complete the inspection of the living area.

The tenant clarified that the person in attendance at the time of the inspection was a family member and not the tenant themselves.

The landlord submits that, based on the evidence of bed bugs in the building they attempted to schedule treatment of the affected units, including the rental unit and sent the tenant an email dated October 9, 2020 stating:

> [The pest control company] will be returning on Wed between 9 and 5 – I will know on Tuesday exactly what time – to proceed with the heat treatment for bed bugs in your unit and the unit above.

The parties agree that the pest control company attended at the rental property on October 14, 2020 and attempted to gain entry to the rental unit but the tenant declined to allow entry. The unit above was treated for bed bugs on that date.

In an email sent by the tenant to ML dated October 15, 2020 the tenant states:

> I DO NOT HAVE BED BUG INFESTATION
>
> I will NOT permit entry to my unit to do a heat treatment on Monday October 19, 2020

The landlord characterizes the interference with the initial inspection noted on the report dated October 8, 2020 and the tenant's subsequent refusal to allow access to the rental unit for the purposes of treatment to be a significant interference giving rise to the issuance of the 1 Month Notice on the following fate on October 16, 2020.

The landlord submits that they had legitimate reason to access the rental unit for purposes of investigating the complaints from other occupants about the presence of bed bugs and for treatment based on the observations and recommendations of the pest control company. The landlord's witness ML testified that they were informed by

the pest control company that there was evidence of bed bugs in the unit above the rental unit and that proper treatment requires all adjacent suites be treated for bed bugs lest they simply migrate and find refuge in another unit.

The parties provided evidence on their conduct after the issuance of the 1 Month Notice detailing ongoing communication between the parties, subsequent attempts by the landlord to gain access to the rental unit, suggestions for alternate pest control companies to be retained, attempts made to resolve the issue and the breakdown in the relationship between the parties.

Analysis

Residential Tenancy Rule of Procedure 6.6 sets out the standard of proof and onus of proof stating:

> 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

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. In the present case the parties agree that the 1 Month Notice of October 16, 2020 was served on that date and the tenant filed their application on October 17, 2020, within the statutory timelines.

When a tenant files an application to dispute the notice, as noted above, 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 has identified the reasons provided in section 47(1)(d) and must therefore demonstrate that one or more of the following apply:

> *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;*
> - *put the landlord's property at significant risk.*

The actions of the tenant, and those permitted on the property by the tenant, are not in dispute. Both parties agree that the tenant's family member was present when the initial inspection was conducted by the pest control technician and the search dog. The parties are further in agreement that the tenant declined to allow the landlord and the pest control company access to the rental unit on subsequent dates for further inspection or treatment.

The landlord characterizes the conduct of the tenant and their family members to be a significant interference and a breach giving rise to the issuance of the notice. The landlord submits that, based on the recommendations from the pest control company, it was imperative that they have access to the rental unit as treating the other units would not eradicate the bed bug problem. The denial of entry into the tenant's unit and refusal to allow the landlord's pest control company to inspect or treat for bed bugs compromises the landlord's obligation to keep the building safe for all occupants of the property as required under section 32(1) of the *Act*.

In reviewing the conduct of the tenant against the statutory standards set in section 47(1)(d), I must consider the text, context and purpose of the *Act*. The Court, in *Guevara* v. *Louie*, 2020 BCSC 380 provides guidance at para 55 stating:

> Section 47 sets out a number of grounds on which a landlord may rely upon to terminate a tenancy. A review of all of the grounds on which a tenancy may be terminated under s. 47 makes it apparent that the tenant must have engaged in serious misconduct that seriously affected the landlord or the other tenants of the building in which the premises are located, failed to comply with a condition precedent to the rental agreement coming into effect (s. 47(1)(a)) or have taken an unreasonable amount of time to comply with a material term of the tenancy agreement.

Based on the totality of the evidence I find the landlord has not met their evidentiary burden on a balance of probabilities to establish that there is cause for this tenancy to end.

The landlord provided little evidence of the initial complaint from an occupant of the building which has cascaded into this multi-year process culminating in the present hearing. As the tenant notes, the landlord did not provide notes, correspondence or documentary evidence of the initial complaint and did not call as a witness any of the other occupants of the rental building. I find there is a paucity of evidence to support the landlord's position that there were complaints from the other occupants of the building about bed bugs.

Nevertheless, I accept the landlord's position that they came to believe there was a bed bug issue in the rental building, reported from suites adjacent to the rental unit. The landlord retained a third-party pest control company to attend and perform inspections of the property. I find insufficient evidence that the conduct of the tenant or persons permitted on the property by the tenant can be accurately characterized as a significant interference or unreasonable disturbance during the initial inspection.

The report from the pest control company states that the person in the rental unit "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 through the sliding door, asking what we were doing and when would we be done." I find the description of the behaviour to be more in the nature of an annoyance rather than interference or disturbance. I find that asking questions about the process or the duration of an inspection are reasonable inquiries when testing is being done in one's living space. While their presence may have been a distraction and annoyance to the technician, I find little evidence that the tenant or a person permitted on the property by the tenant directly or indirectly interfered with the investigative process.

If the person in the rental unit was physically interfering with the technician's inspection or preventing them from conducting the inspection such actions may be characterized as an interference, but in the present case, based on the written report there is no evidence that either the tenant or a person permitted on the property by the tenant took such actions. It is reasonable to expect that the technician would note in their report the details of any issues they faced when conducting their inspection. The evidence before

me is that the uncooperative interruption consisted of their presence in the rental unit, which was permitted by the technician, and asking questions pertaining to the process. While I certainly sympathize with the technician who must deal with curiosity and questions while attempting to complete their duties, I am unable to find that this conduct can reasonably be characterized as a significant interference or unreasonable disturbance.

Similarly, I find the tenant's subsequent actions denying access to the rental unit for the purposes of further inspections and treatment do not rise to the level of a serious breach giving rise to an end of the tenancy.

The landlord's own evidence, including information pages from their pest control company regarding bed bugs, states, "Bed bug bites are usually painless but some individuals may feel some pain. A bite is only harmful if it develops into welts or blisters. Welts can sometimes develop into a secondary infection from bacteria and can lead to severe inflammation, pain, and swelling" and "Bed bugs do not transmit disease-causing pathogens and germs. Bacterial secondary infections resulting from bed bug bites can be harmful. The presence of bed bugs can be very stressful and can sometimes create psychological problems."

While I accept the evidence of the landlord that they had legitimate, reasonable grounds to believe there were bed bugs in the rental unit and that they believed that treatment in the rental unit was necessary to prevent eventual spread to other units in the building, I find the tenant's denial of entry on October 14, 2020 and subsequent correspondence on October 15, 2020 declining to permit entry on October 19, 2020 are not so egregious that it may be characterized as a significant interference or unreasonable disturbance.

The landlord submits that the refusal by the tenant to allow access to the rental unit has prevented them from providing and maintaining residential property in a state of repair that complies with health, safety and housing standards as required under section 32(1). I find insufficient evidence in support of the landlord's position.

Based on the evidence, I find that bed bugs are an unpleasant phenomenon and a nuisance, but I do not find their presence to constitute a serious jeopardy to the health or safety of residents of the rental building or to put the property at significant risk. I find insufficient evidence that the tenant's refusal to allow access to the suite was a significant interference or unreasonable disturbance of the landlord or any other occupant of the property. While I understand the landlord believed there to be bed bugs

in the building and treatment of the suite was necessary, I do not find that gives rise to sufficient cause to end the tenancy.

I further take note of the post-Notice conduct of the parties and the subsequent occurrences. The Courts have found the post-notice conduct is relevant when making a determination of whether an end to the tenancy was justified or necessary within the context of the Act: *McLintock v. British Columbia Housing Commission,* 2021 BCSC 1972 at paras. 58-59, *Senft* v. *Society For Christian Care of the Elderly*, 2022 BCSC 744 at paras. 39-40.

In the present case, as the 1 Month Notice was served on October 16, 2020 and nearly 20 months have elapsed, if the tenant's refusal to allow access to the rental unit resulted in an outbreak of bed bugs in the rental building, or if any other occupants suffered negative effects from the ongoing presence of pests it would be reasonable to expect some evidence as to the consequences of the tenant's breach.

I find little evidence that the tenant's failure to allow the landlord access to the rental suite has resulted in an uncontrolled increase in bed bugs in the rental property such that the adjacent units or the property has experienced any detrimental effects. The tenant submits evidence that they have suffered no bites from bed bugs at any time. I find no evidence that the landlord has received further complaints about bed bugs or that there has been an ongoing pest problem in the rental building. I find insufficient evidence that the conduct of the tenant has had any measurable effect on the other occupants of the rental property.

Based on the totality of the evidence before me I am unable to find that the tenant's actions whether individually or cumulatively have caused any jeopardy to health or safety, put the property at risk or be characterized as a significant interference or unreasonable disturbance. Consequently, I allow the tenant's application to cancel the 1 Month Notice of October 16, 2020. The Notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord. While the tenant made an oral application to recover, not simply the original filing fee of $100.00 but the costs of their subsequent applications for review and costs for the judicial reviews, I decline to make such an order. I find that pursuant to section 72(1) it is appropriate and sufficient to order recovery of the $100.00 initial filing fee. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of $100.00 from their next scheduled rent payment.

Conclusion

The tenant's application to cancel the 1 Month Notice is successful. The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant is authorized to make a one-time deduction of $100.00 from their next scheduled rent payment.

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: June 1, 2022

Residential Tenancy Branch