



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed on February 23, 2022, to end the tenancy because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord and the landlord wants an order of possession pursuant to section 56 of the Act.

The landlord attended the hearing. The landlord provided affirmed testimony. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on March 11, 2022, a Canada post tracking number was provided as evidence of service. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord testified that their additional evidence was sent to the tenant on May 20, 2022, by registered mail.

Preliminary and procedural issues

In this case the landlord has applied for an expedited hearing on February 23, 2022. The landlord was to describe in their application the details the threat to life and/or

property that the tenant is posing: The landlord writes the following details in their application:

“The application will be given in person, we aim for the tenant to complete the hand delivery receipt from RTB-34”

[Reproduced as written]

The landlord testified that they were notified by the Residential Tenancy Branch (the “RTB”) that their application was deficient for an expedited hearing and that is why on March 9, 2022, they submitted a letter the RTB outlining the particulars of their application that was attached to the application when served on the tenant on March 11, 2022 with their evidence that was filed on February 23, 2022.

In this case, although the landlord’s application does not comply with section 59 of the Act; however, I am satisfied that the tenant was provided the full particulars of the issued to be heard by the attached letter of March 9, 2022, to the landlord’s application and supporting evidence filed on February 23, 2022.

The Residential Tenancy Branch Rules of Procedure 10.2 states the following;

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution

However, the landlord submitted additional evidence on March 11, 2022, which included a monetary worksheet seeking compensation, again on April 4, 2022, and their final submission of evidence on May 20, 2022, and the tenant was served with these documents on May 20, 2022. I find the landlord was not entitled to submit additional evidence after their application was filed. Therefore, I find any evidence filed after March 9, 2022, will not be considered. Further, the landlord cannot claim monetary compensation as it is not an issue in their application.

Issue to be Decided

Is the landlord entitled to an order of possession pursuant to section 56 of the Act?

Background and Evidence

The tenancy began on March 1, 1979 (42 years earlier). Current rent in the amount of \$1,170.00 was payable on the first of each month. The tenant paid a security deposit of \$349.32.

The landlord testified at the beginning of January 2022, they received complaints about bedbugs. The landlord stated that they had a bed bug inspection completed and it was discovered that there was a really bad infestation. The landlord stated that they had three different vendors and they all stated that they have never seen such a bad infestation as the one that the tenant had in their rental unit. The landlord stated that this impacted six different rental units.

The landlord testified that the tenant has a hoarding problem which even made the situation worse. The landlord stated that through the period of January to March 2022, they did constant pest control treatment, heat treatment and inspections weekly.

The landlord testified that they have paid for two different decluttering companies to declutter the tenant's rental unit which was charged back to the tenant so the treatments would be more effective. The first one was on February 5, 2022, and the second one was on February 14, 2022, which was completed.

Filed in evidence are pest control reports, receipts for decluttering and letters of other occupants.

The first inspection report of the rental unit was on January 12, 2022, reads as follows:


Unit #	Br. #	Inspected / Treated Areas(s)	Pest	Injury Threshold	Service	Conditions Favoring Pest Infestation	Pesticide Usage & Weather Conditions	Pesticide(s) Used	Monitoring Method	Advice & Precautions / Notes
C1408	1	Bedroom 1 Living room	Bed Bugs	Heavy activity	Inspection	Clutter issues Sanitation issues	Not applicable		Not Applicable	Inspected for Bedbugs, unit heavily infested with Bedbugs, large amount of clutter and sanitation issues. Please contact our office to plan out the next steps for this unit. (Office, this is the 14th floor, heat recommend if it can be set up, trauma work required, unit will need to be cleaned up and items removed, carpet needs removal also.) Tenant is not mobile. All picture's attached are of this unit, bugs are also in the hallway. Full floor

The February 17, 2022, inspection report (the "Report") reads as follows:

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SCIENCE™

Bed Bug Action Plan, 1651 Harwood St/Devonshire Properties
17/02/2022

Devonsh
Propert

Unit Number	Description of issue	Pictures	Corrective Action
1408	<p>This unit has been the source of many of your bed bug issues. The unit was very cluttered and had a very high activity of bed bugs.</p> <p>We have done the following to bring the numbers down.</p> <ul style="list-style-type: none"> ➤ We had to declutter the unit so we could eliminate cold spots and areas where bed bugs could hide ➤ We have done the initial heat treatment to bring the bed bugs population down. ➤ Applied chemical to deal with some stragglers that survived the heat treatment <p>Dead bed bugs that are under the bed and in boxes. We have eliminated and brought the bed bug population down by 90%-95%.</p>		<ul style="list-style-type: none"> ➤ We need to remove the carpet, so we can get to any bed bugs that have been missed, this will get us better results to get rid of this issue, once and for all. ➤ We need David the tenant to go through some of the boxes with paper in

The landlord testified that the tenant has not brought anymore clutter in; however, they have done a recent inspection of the of the building floor, which is clean. However, there is a strong smell of odour of urine and mold coming from the rental unit, which makes it hard for the K-9 bedbug to inspect the rental unit. The landlord stated that they need a permanent solution to the problem by ending the tenancy.

The landlord testified that they have been trying to work with the tenant who is 80 plus years old who can no longer properly care for themselves and should be in some type of care home.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Application for order ending tenancy early

56 (1)A landlord may make an application for dispute resolution requesting

- (a)an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
- (b)an order granting the landlord possession of the rental unit.

(2)The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a)the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii)put the landlord's property at significant risk;

(iv)engaged in illegal activity that

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

(B)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v)caused extraordinary damage to the residential property, and

(b)it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I am not satisfied that the landlord has met the requirements of section 56 of the Act as the landlord must prove both section 56(2) and 56(3) of the Act.

I accept there was a bedbug infestation in the tenant's rental unit that came to the attention of the landlord in January 2022, and other units were impacted. However, I am not satisfied that the tenant has significantly interfered with another occupant or the landlord or has put the health and safety of the occupants or the landlord at risk as alleged.

I have reviewed the pest control company reports. The first report of January 12, 2022, shows that the rental unit will need to be cleaned. The tenant agreed to have the rental unit cleaned and this was done with the assistance of the landlord hiring a company on February 5, and February 14, 2022, which was billed back to the tenant, which I find reasonable in this circumstance.

The Report of February 17, 2022, shows that the rental unit was decluttered, and treatment occurred bringing down the infestation by 90 to 95%. The pest control indicated that the corrective action would be to have the carpets removed and that the tenant should go through some boxes of paper. The Report does not support that the tenant is interfering with the landlord's right to have the premises treated, nor does the Report indicate that the tenant is seriously jeopardizing the health and safety of any occupants.

The landlord's evidence was that they are unable to have the k-9 dog that smells for bedbugs go into the unit as there is an overwhelming smell of urine and mold as this would ensure a permanent solution. However, nowhere in the details of March 9, 2022, letter or in the Report that I have referred above has raised this as being an issue before the landlord made this application. Further the smell of urine could be a medical issue and health issue of the tenant.

Clearly between January 12, 2022, and February 17, 2022, the rental unit was decluttered and the infestation in the rental unit was being addressed and reduced by 95%. The landlord's application was filed on February 23, 2022, under section 56 of the Act.

Further, the tenant is a senior 80 plus years, with obvious health concerns and has been living in the rental unit for 42 years. There are no warning letters filed in evidence that predate the landlord's application. I find it very heavy handed that the landlord's only option was to apply for an urgent application claiming the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, when at the time their application was the Report of February 17, 2022, shows the bedbug infestation was reduced by 95%.

If this truly was an urgent application, I would have expected the landlord to have filed their application for this expedited hearing on January 12, 2022, when the issue was first discovered as they alleged it was an immediate risk, and not wait until February 23, 2022. Clearly during this time, the tenant and the landlord have been working on resolving this issue. This does not lead me to believe that it would be unreasonable or unfair for the landlord to wait for the effect of a notice to end tenancy pursuant to section 47 of the Act.

While I accept that some occupants have been impacted for a short duration of time with bedbugs; however, their rental units were being treated even before the tenant's unit was identified as the source of the bedbugs. I accept being bitten by a bedbug would not be pleasant; however, there is no evidence that leads me to believe that this seriously jeopardized their health.

Based on the above, I dismiss the landlord's application.

Conclusion

The landlord's application is dismissed.

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 16, 2022

Residential Tenancy Branch