



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OLC, CNC, FFT**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) The Tenant applied for the following:

- an order cancelling a One Month Notice to End Tenancy dated February 24, 2022 (“1 Month Notice”) pursuant to section 47;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

An agent (“PL”) for the Landlord and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant testified she served the Notice of Dispute Resolution Proceeding and some of her evidence (“NDRP Package”) on the Landlord in-person on March 11, 2022. PL acknowledged the Landlord received the NDRP Package in-person. I find the NDRP Package was served on the Landlord pursuant to the provisions of sections 88 and 89 of the Act.

The Tenant stated she served additional evidence on the Landlord in-person on March 19 and March 28, 2022. PL acknowledged the Landlord received the Tenant's additional evidence in-person. I find the Tenant's additional evidence was served on the Landlord pursuant to the provisions of section 88 of the Act.

PL stated the Landlord served its evidence on the Tenant's door on June 1, 2022. The Tenant acknowledge she received the Landlord's evidence. I find the Landlord's evidence was served on the Tenant pursuant to the provisions of section 88 of the Act.

#### Preliminary Matter – Removal of an Applicant

At the outset of the hearing, it became clear that another person ("DP") named as an applicant in the Application, is not a tenant to the tenancy agreement between the Landlord and Tenant. The Tenant stated the DP was another tenant who lived in a different rental unit located in the residential property The Tenant requested that I amend the Application to remove DP as an applicant in the Application.

Residential Tenancy Branch Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlord could reasonably have anticipated the Tenant would request an amendment to remove a party, who is not a tenant to the tenancy, as an applicant from the Application. As such, I amended the Application to remove DP as an applicant.

#### Preliminary Issue – Severance and Dismissal of Claims made by Tenant

The Application included a claim for an order that the Landlord comply with the Act, Regulation and/or tenancy agreement (the "Claim for Compliance").

Rule 2.3 of the RoP states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Application was to determine (i) whether the tenancy would continue or end based on the 12 Month Notice and (ii) whether the Tenant was entitled to recover the filing fee of their Application. As such, I severed and dismissed the Tenant's Claim for Compliance with leave to reapply.

### Issues to be Decided

Is the Tenant entitled to:

- cancellation of the 1 Month Notice?
- authorization to recover the filing fee for the Application?
- if the 1 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on June 1, 1996 for a fixed term ending on May 31, 1997 and continuing on a month-to-month basis, with rent of \$725.00 payable on the 1<sup>st</sup> day of each month. Pursuant to a renewal agreement dated October 8, 2021, the rent is \$1,225.00 per month commencing January 1, 2022 to December 31, 2022.

The Tenant was to pay a security deposit of \$362.00. PL stated the Tenant paid the deposit and that Landlord is holding it in trust for the Tenant.

PL stated the 1 Month Notice was served on the Tenant's door on February 24, 2022. The Tenant acknowledged receiving the 1 Month Notice. I find the 1 Month Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

As noted above, the person referred to as DP above is a tenant in the same residential property as the Tenant. Hereinafter I will refer to the rental unit occupied by DP as Unit 000.

The 1 Month Notice stated the causes for ending the tenancy were that the Tenant, or a person permitted on the property by the tenant, has:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk

The 1 Month Notice provided the following details for the causes to end tenancy:

February 17, 2022 [the Tenant] was helping the tenant from [Unit 000] in the same building with vacuuming the unit and doing his laundry. [Unit 000] has had a bed bug infestation that [the Landlord] has been treating. We, the landlords, did our due diligence to treat unit, the hallways and surrounding units for bed bugs. [The Tenant] decided to dispose any residual bed bugs from [Unit 000] into the hallway and laundry systems of the 14<sup>th</sup> floor, jeopardizing the safety of all the residents. This was witnessed by several other tenant on the 14<sup>th</sup> floor, who later informed the landlord. Furthermore, we inspected [the Tenant's] unit for bed bugs and identified their presence in her apartment. [The Tenant] has been self treating the bed bugs and failed to inform the landlord that she had bed bugs in her apartment in a timely manner.

PL stated a bedbug infestation was found in DP's rental unit. PL stated exterminators treated DL's rental unit on February 2, 2022 and then treatment of surrounding units was performed on February 4, 2022. PL stated decluttering was undertaken in DL's rental unit between February 7 and February 14, 2022. PL stated the exterminators performed a heat treatment in DL's rental unit on February 16, 2022. PL stated that, on February 17, 2022, the Tenant was assisting DP clean his rental unit and wash his bedding and clothing in the laundry room on the 14<sup>th</sup> floor.

The Landlord submitted into evidence a notice from the exterminator ("Exterminators' Notice"), given to residents affected by the bedbug infestation, which stated the following:

**HOW SHOULD CLIENT PREPARED FOR THE  
TREATMENT/EXTERMINATION?**

Bed should be bare when the technician arrives. All bedding, slip covers, pillow cases, etc. must be removed prior to the tech arriving. Clothing, blankets, comforters, pillows and pillowcases, etc. should be washed in hot water (separate from all other laundry) or dry cleaned by client, before or soon after the treatment to avoid resurgence of Bed Bugs. Have a pair of clean bed sheets ready to use.

Tenants should bag up all clothing that is in contact with the floor, or in nearby dressers. This clothing should be washed in hot water or dry cleaned. Clean clothing should remain out of the room until the treatment is complete.

Bookshelves, nightstands or other furniture in the immediate area must be emptied so that the technician can spray the undersides of the furniture. Place all items in tightly sealed garbage bags and leave them in the room to be treated.

PL stated the Landlord did not take issue with the Tenant washing DP's laundry using the laundry room on the 14th floor or the state of the laundry and dryer after the Tenant used them. PL stated the Landlord also understands that travel between a rental unit and the laundry room can result in bedbugs "navigating" through those areas. PL stated the Landlord also took steps to have the hallway treated between February 15 to 18, 2022 after decluttering and treatment of the Unit 000. PL stated other tenants reported that the Tenant put bedbugs in the hallway outside the door for Unit 000. PL stated there appeared to be residue from vacuuming after the treatment took place. PL stated one tenant "claimed to have seen a live bedbug on the hallway" after all the treatments were performed.

PL submitted into evidence an undated letter ("Statement 1") from an occupant of the 14<sup>th</sup> floor who stated in part:

On February 17 in the morning a gentleman came to the hallway to clean the carpet. I open the door and asked if he was there to clean the carpet and I noticed a lady standing in front of [unit 000] with her [illegible word]. She stayed there while the carpet was getting clean.

The same lady during the afternoon who coming in and out of [Unit 000]. Saw her through my peephole and I open the door at some point to make sure the door was close behind her. She was washing and drying and then early evening she was using the washing machine. I could ear [sic] the noise and at some point she confronted with other tenants about her behavior. I guess I was able just to ear [sic] people talking. That was around 7:30 pm.

PL submitted into evidence an undated letter ("Statement 2") from another tenant of the 14<sup>th</sup> floor that stated in part:

Yesterday, February 17, 2022, I took my [illegible work] for a walk and saw that the carpet was clean.

7 hours later, my [illegible word] comes upstairs and sees so many bed bugs alive and dead.

The neighbour said that she saw a lady outside her door opening and closing the door and approached her. She didn't deny the bugs she planted. Later the neighbour saw her do the same thing to the laundry. Now she is infecting the units around us. The apartment ALWAYS smells like garbage and urine and the whole hallway is [illegible words].

PL submitted into evidence an undated letter ("Statement 3") from another occupant of the 14<sup>th</sup> floor that stated in part:

[Name of person] informed us at 6:45 on FEB 17th that there was a pile of bugs outside of the Elevator. We went out to investigate and there was a pile of about 20/30 bugs, some alive. As we walked back to our unit, we saw an older woman doing laundry. She was picking at the clothes and tossing on the ground. It looked very suspicious. This woman then went back to [Unit 000]. This is the unit we have had problems with. There is a constant smell of urine and it's the source of the bugs. I went out to the machines, they were covered in bugs, along with the surrounding ground. [Name of person] and I decided to confront her when she came back.

We went out and brought the pile by the elevator to her attention. She said, what bugs, you are lying. I again pointed them out., She then said, well, they are all dead. Earlier in the day we had heard her cleaning in that suite. There is no doubt in my mind that she emptied something into the hallway. We exchanged words but

not once did she deny it. Also, at the laundry. She was shaking the items out over the floor. This has been a huge issue for us. [Name of residential property] is having people come treat our units but it's pointless if this person is sabotaging.

I asked PL if she was calling any of the tenants who provided the Statements referred to above to give oral testimony at the hearing. PL stated that one of the tenants had vacated their rental unit and the other two tenants were at medical appointments and could not attend this hearing.

PL stated the exterminators did an inspection of the Tenant's rental unit on February 23, 2022. PL stated the exterminators found activity on the sofa bed in the living room in the form of bed bug eggs but they were unable to determine whether they were alive or dead from a previous treatment. PL stated the exterminators found a live bedbug in the bedroom and a lot of fecal spotting. PL stated the Tenant has been self-treating as there was a lot of powder on the bed. The exterminator did not know if they had been applied the powder on an earlier date or if a different pest control company applied it. PL submitted into evidence a letter from the exterminator to corroborate her testimony. PL stated that the Tenant's rental unit, and a rental unit adjacent to the Tenant's rental unit, was treated for bedbugs.

The Tenant stated DP is a friend who suffers from physical disabilities. The Tenant stated the exterminator performed a heat treatment in DP's rental unit on February 16, 2022. The Tenant stated she found DP in his car when she returned home from work that day. The Tenant stated that, around 8:00 pm, the exterminator came and told DP the treatment was completed and DP could return to his rental unit. The Tenant stated she went to DP's rental unit and found there were absolutely no living bedbugs left. The Tenant stated the heat treatment was so hot, that it deformed a plastic calculator and melted a lampshade in DP's rental unit. The Tenant stated she helped DP put the special covers on the mattress and box spring.

The Tenant stated that, on February 17, 2022, she went back to DP's rental unit because the sheets had to be washed in accordance with the instructions of the exterminator who performed the heat treatment. The Tenant stated that, when she was leaving DP's rental unit, the elevator door opened and there were three women in the car acting suspiciously. The Tenant stated that as soon as they saw her, one of them looked down and pointed at the floor saying 'bedbugs, bedbugs' to the other two people. The Tenant stated she checked the laundry and then returned to DP's rental unit. The Tenant stated that about 10 minutes later, she left DP's rental unit to check the laundry and the three women were in the hallway and they commenced verbally

berating her using vulgar language. The Tenant stated that one woman was acting in a very provocative manner as though she was attempting to get the Tenant to engage in a physical fight with her. The Tenant stated the woman repeated comments about bedbugs. The Tenant does not know the three women. The Tenant stated that she saw someone vacuum the hallway floor she but did not know who they were.

The Tenant stated the exterminators came to her rental unit on four occasions. The Tenant stated the exterminators found only one living bedbug during one of four inspections. The Tenant stated she had a bedbug infestation in her rental unit two years ago and, as a result, she has attempted to do her best to maintain her rental unit by using a powder every six months. The Tenant stated she was unaware there was a live bedbug in her rental unit and denied that she deliberately failed to inform the Landlord that there were bedbugs in her rental unit. The Tenant stated she did not know how the live bedbug got into her rental unit but admitted that it could have been inadvertently transferred by her from DP's rental unit. The Tenant stated that, as a tenant of the rental unit for 26 years, she was insulted by PL's allegations that the Tenant would jeopardize anyone's safety.

PL stated tenants came to her after on the morning of February 17, 2022 to complain that the Tenant was sabotaging the bedbug treatment. However, PL did not call any of those six tenants to give oral testimony to corroborate her statement that the Tenant had spread vacuum cleaner residue on the 14<sup>th</sup> floor hallways or that the Tenant was seen spreading any materials on those hallway. Although the Tenant denied she vacuumed DP's rental unit during the period of the bedbug treatment, I asked PL where in the Exterminators' Notice did it state that residents were not to vacuum after a treatment for bedbugs. PL did not deny that vacuuming was prohibited but stated that it would be "understood not to put the residue out in the hall" and it would be common sense for a person to place the residue in a bag and dispose of it. The Landlord stated that the Tenant should not have to do their own bedbug treatment every six months and that a tenant should report any pests to the Landlord to deal with.

The Tenant stated she was told by the exterminator that the pesticide you used was good for self-treatment and that it could be mixed with water to permit it to be sprayed.



## Analysis

Subsections 47(1)(d)(ii), 47(1)(d)(iii) and 47(4) of the Act state:

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;

[...]

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

[emphasis in italics added]

PL stated the 1 Month Notice was served on the Tenant's door on February 24, 2022. Pursuant to section 90, the Tenant was deemed to have been served with the 1 Month Notice on February 27, 2022. Pursuant to section 47(4), the Tenant had 10 Days after she received the 1 Month Notice, being March 9, 2022 to file the Application. The records of the Residential Tenancy Branch disclose the Tenant filed the Application on March 2, 2022. As such, the Tenant filed the Application within the 10-day dispute period.

PL arguments for ending the tenancy on the basis of the 2 Month Notice were based two events. The first was that the Tenant dumped residue from a vacuum cleaner in the hallway in front of DP's door. The second was that the Tenant was self-treating for bedbugs in her rental unit without informing the Landlord so that the Landlord could arrange for treatment of the Tenant's rental unit.

The Landlord submitted three Witness Statements, all of which were undated, and none of which were signed by the persons who provided them to the Landlord. Statement 1 stated the writer had seen a woman, presumably the Tenant, doing washing and drying and, at some point, she heard the woman arguing with other tenants. Nowhere in

Statement 1 did the writer state she saw the woman vacuuming or disposing the residue from a vacuum cleaner onto the 14<sup>th</sup> floor hallway.

Statement 2 stated the 14<sup>th</sup> floor hallway floors were clean when she left but when she returned there were dead and living bedbugs. The writer stated she spoke to a neighbour who saw a woman on the 14<sup>th</sup> floor hallway and that the woman did not deny she planted bedbugs and that the neighbour saw the woman do the same thing in the laundry. Nowhere in Statement 2 does the writer state she saw the Tenant vacuuming or disposing of residue from a vacuum cleaner onto the 14<sup>th</sup> floor hallway.. Furthermore, assuming the woman referred to in Statement 2 was the Tenant, the fact that the Tenant did not deny dumping residue on the carpet does not mean the Tenant admitted to dumping vacuum cleaner residue onto the hallway floor. I also note that the writer's statement of what her neighbour said is hearsay evidence. As I was unable to examine the writer or the neighbour referred to in Statement 2, I place no weight whatsoever on this portion of the writer's statement. I also note that PL testified the Landlord was not taking issue with the Tenant doing DP's laundry in the laundry room.

In Statement 3, the writer states that on February 17 at 6:45, there was a pile of about 20 to 30 bedbugs outside of the elevator. The writer states they saw an older woman "picking" at the clothes in the laundry room and tossing them on the ground and that the woman acting suspiciously. The writer states she went out to the machines and they were covered in bugs, along with the surrounding ground. The writer states that she confronted the woman and she stated the bedbugs were all dead. The writer stated they heard her cleaning in Unit 000 and that they had no doubt that the woman emptied something into the hallway. The writer stated they exchanged words with the woman and the woman did not deny it. Assuming the woman was the Tenant, nowhere in Statement 3 does the writer stated she actually saw the Tenant vacuuming or dumping residue from the vacuum cleaner onto the 14<sup>th</sup> floor hallway. Furthermore, the Landlord and the writer of Statement 1 stated the vacuum cleaner residue was in front of the door to DP's rental unit. The writer in Statement 3 stated the residue was in front of the elevator. Lastly, as noted in respect of Statement 2, the fact that the Tenant did not deny dumping residue on the carpet does not mean the Tenant admitted to dumping vacuum cleaner residue onto the hallway floor.

I find the testimony of the Tenant to be forthright and credible. The Tenant testified that she did not vacuum the floors in DP's rental unit after the treatment of that unit and that she did not dump anything on the 14<sup>th</sup> floor hallways. However, even presuming the Tenant did vacuum the floor (which I do not find), there is nothing in the Exterminators' Notice that states residents were not to vacuum floors after a treatment for bedbugs.

The Landlord stated she had six complaints from residents of the residential property about the Tenant on February 17, 2022. However, the Landlord has not called any of those six residents to testify they saw the Tenant dump vacuum cleaner residue, or otherwise dispersing living or dead bedbugs, on the 14th floor hallways. Furthermore, PL did not provide any photographs or videos showing the Tenant dumping vacuum cleaner residue on the carpets, or otherwise dispersing living or dead bedbugs in the hallway.

Subsection 47(1)(d)(ii) uses the adjective “seriously”. This means a landlord must prove the activity, behavior or misconduct of the tenant must be sufficient to warrant the eviction of the Tenant. In the present case, I find the Landlord has not proven, on a balance of probabilities, that the Tenant has engaged in any activity, behavior, or misconduct that has jeopardized the health or safety or lawful right of another occupant or the Landlord, let alone providing adequate testimony and evidence to demonstrate that the activity, behavior, or misconduct meets the threshold of being “serious” as required by section 47(1)(d)(ii).

PL also alleged the Tenant was self-treating her rental unit for bedbugs. PL stated the Tenant placed the Landlord’s property at significant risk by failing to advise the Landlord that her rental unit required treatment for bedbugs. The Tenant stated her rental unit was treated for bedbugs two years ago and that she takes precautionary measures to avoid reinfestation by treating her rental unit every six months or so. I do not see how the inference may be drawn that, by taking precautionary measures to avoid infestations of bugs in her rental unit, it may be concluded that the Tenant has failed to advise the Landlord that there are bedbugs in her rental unit. As such, I find the Landlord has not proven, on a balance of probabilities, that the Tenant has placed the Landlord’s property at significant risk.

Based on the foregoing, I find the Landlord has not established any of the causes listed in subsection 47(1)(d)(ii) or 47(1)(d)(iii) of the Act. As such, I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in the Application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this monetary order by deducting \$100.00 from the next month’s rent, notifying the Landlord when this deduction is made.

The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when the Tenant makes the foregoing deduction.

Conclusion

The 1 Month Notice is cancelled. The tenancy continues until ended in accordance with the Act.

The Tenant is entitled to deduct \$100.00 on one occasion, from rent due to the Landlord, to reimburse her for the filing fee of the Application.

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 23, 2022

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Residential Tenancy Branch