



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0895338 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking cancellation of a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord.

The tenant and the landlord appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter- At the outset of the hearing, neither party raised any issue regarding the service of the documentary evidence, with the exception that the photographs submitted by the landlord had not been filed in a timely manner; in other words, the landlord submitted the photographs just 3 business days ahead of the hearing not the required 5 business days. The photographs were not in the hearing file.

The tenant referred to the photographs during the hearing and requested that I accept the landlord's evidence due to his contention that the photographs supported that the landlord did not have grounds to end this tenancy.

I agreed that I would review the photographic evidence of the landlord, and that if I was unable to locate the photographs, the landlord would be contacted to supply new

copies. This was not necessary as I located the photographs shortly after the hearing and they were reviewed and considered.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

This tenancy began April 1, 1991, monthly rent is currently \$481.77, and a security deposit of \$100 was paid by the tenant.

The rental unit is located in a 345 unit building.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated September 30, 2013, was delivered on September 30, 2013, by leaving it with the tenant, and listed an effective end of tenancy on November 1, 2013.

The causes listed on the Notice alleged that 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, or has put the landlord's property at significant risk.

The landlord's relevant documentary evidence included a copy of the Notice, multiple written notices to the tenant regarding issues with the rental unit, a note from a local pest control company, photographs of the condition of the rental unit, and notices of pesticide spraying.

In support of issuing the Notice to the tenant, the landlord submitted that the causes listed on the Notice pertained to the condition of the rental unit, which the landlord described as filthy and deplorable.

The landlord submitted that they have made numerous attempts this year to work with the tenant in assisting him in cleaning and upgrading the rental unit to meet health and safety standards, all of which the tenant refused.

In particular, the landlord submitted that the deteriorating state of the rental unit affected the overall safety and health of the building and its occupants, such as a thick layer of

dirt and grime, the linoleum floor was worn thin, the bedding of the tenant was worn thin, and the windows are yellow with grime.

Additionally, the landlord submitted another reason for issuing the tenant a Notice to end the tenancy was due to the tenant's refusal to allow the pest control company to treat his rental unit for bedbugs and cockroaches, which is detrimental to the landlord's attempts to eradicate the insects from the entire residential property. The landlord asserted that as the tenant has not allowed treatment, it is impossible to rid the entire building of the pests.

In response, the tenant contended he did not refuse entry for the treatments, as no one ever knocked on his door on September 24.

The tenant argued that he is allergic to pesticides and there was no reason to treat his rental unit as he did not have bedbugs or cockroaches.

The tenant submitted that all the accusations of the landlord were exaggerated, as his rental unit was not filthy, only that the walls and floors were discoloured due to mildew and nicotine.

The tenant said the landlord's pictures proved he did not have bedbugs or cockroaches and that there has been no bylaw violation.

Analysis

The landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove each or any of the alleged causes listed. The landlord has issued a Notice to End Tenancy listing three alleged causes, all of which are interrelated.

After considering all of the oral evidence submitted at this hearing and documentary evidence evidence submitted prior to this hearing, I find that the landlord has provided insufficient evidence to substantiate the causes listed. In reaching this conclusion I find the landlord failed to submit any actual proof, only supposition, that the rental unit did in fact have bedbugs or cockroaches. Despite the note from the pest control company citing their belief that the rental unit "would seem" to be the main source of the infestation, I did not see any evidence to support this statement and the tenant has denied that he has bedbugs or cockroaches.

I would have expected there to be a professional's report that bedbugs or cockroaches were found in the rental unit and I find a simple inspection from a professional would easily determine the presence of such.

The landlord argued that by the tenant posting a notice on the door that he did not want the rental unit sprayed, the tenant refused entry; however the landlord is entitled to enter the rental unit without the tenant's authority, as long as proper notice was issued pursuant to section 29 of the Act. The notice of entry must contain the purpose for entering, which must be reasonable, and provide a time and date. I note that the notice issued by the landlord was invalid, as the landlord did not list a specific time as required, just generally beginning at 9:00.

For future purposes, the question here may hinge on the term "for a reasonable purpose," as the tenant may truly be allergic to pesticides and may actually have no bedbugs or cockroaches. Residential Tenancy Branch Policy Guideline #7 allows a landlord to apply to the Residential Tenancy Branch for an order from an Arbitrator allowing entry to the rental unit if a tenant prevents entry to the rental unit after a valid notice has been issued. I, however, am not convinced that the tenant blocked the landlord from entering the rental unit.

As to the condition of the rental unit and whether or not the rental unit affected the overall safety and health of the building and its occupants, I find the landlord failed to submit sufficient evidence that this was the case. While I accept that the landlord may have different standards of cleanliness and housekeeping from the tenant, if the state of the rental unit were truly a health and safety hazard, I would expect the landlord to have submitted a report from a proper authority specializing in this matter.

I do not accept the landlord's statements and photographs that the state of the rental unit was a safety hazard, as this is the opinion of the landlord, not a health and safety expert.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated and issued on September 30, 2013, for an effective move out date of November 1, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice, and the Notice is hereby cancelled with the effect that the tenancy will continue 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* and is being mailed to both the applicant and the respondent.

Dated: November 18, 2013

Residential Tenancy Branch

