



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at each of the two hearings. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the first hearing I asked that the tenant number their evidence package; there were 179 pages which were not delineated from each other. The landlord stated he would locate evidence as it was referenced during the hearing.

The landlord had 2 witnesses present at the first hearing; only one of which was able to testify. The 2nd witness was not available to testify during the final hearing held on August 29, 2011.

The tenants submitted a USB device which contained additional evidence; this submission was not considered as I could not be confident that the submission could be viewed by all parties in the same format. Residential Tenancy Rule of Procedure 11.8 references the submission of new technology and the intention to update the rules in relation to the use of this type of evidence during hearings.

A review of the application indicated that the tenants claimed the following compensation:

TOTAL – Receipted costs, loss of property	6,198.96	
Loss equivalent to rent paid, new residence		1,195.00
Total – Rent equivalent claimed	7,195.00	
TOTAL DAMAGES CLAIM	13,393.96	

The application included a specific request for aggravated damages.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the Act for non-pecuniary losses in the sum of 13,393.96?

Are the tenants entitled to return of the \$100.00 filing fee?

Background and Evidence

The tenancy commenced on November 1, 2008; rent was \$1,000.00 per month due on the first day of each month. A copy of the tenancy agreement was submitted as evidence indicating this was a fixed term until April 30, 2009, then converting to a month-to-month tenancy. The tenants paid July 1, 2009, rent and returned the keys to the unit on July 16, 2009; ending the tenancy.

The application indicated that the landlord failed to perform their legal obligation to do whatever was reasonable to minimize damage to the tenants as the result of a bed bug infestation. The tenants have claimed a loss of quiet enjoyment in relation to physical inconvenience, discomfort, pain, suffering, grief, humiliation, loss of self-confidence, loss of amenities and mental stress. In the absence of successful compensation negotiations with the landlord, the tenants submitted their application within 2 years of the tenancy end date; March 11, 2011.

The tenants alleged that the landlord failed to take reasonable steps to address the bed bug problem in their rental unit and that evidence of the landlord's character was reflected in a decision issued on February 5, 2010, in which the landlord was found to have breached the terms of a tenancy agreement through a failure to disclose bed bugs to potential occupants. The tenants submitted that the February 2010, decision supports their claim that the landlord has acted improperly in relation to their tenancy which ended in June, 2009.

The tenants testified that bed bugs were first located in their suite on February 26, 2009. The pests were reported to the landlord, treatment preparations were made and the suite was inspected by pest control on March 3, 2009, Treatment scheduled for March 6, 2009, was delayed by the pest control company until March 10, 2009. A follow-up treatment was carried out within fifteen days, on March 15, 2009.

On April 1, 2009, the female tenant found bites to her body; treatment was then provided to the unit on April 3 and April 17, 2009.

On April 26, the tenants found a live bed bug in the unit and the next day the tenants requested an alternate form of treatment. The landlord investigated 3 companies and discovered that they all used the same methods and the same chemical to deal with the pests. The landlord determined they would remain with their experienced pest control company. Between May 1 and June 5, 2009, no live bed bugs or bites were reported by the tenants

On May 28, 2009, the landlord hired a canine service provided by the pest control company and it was determined that 5 of 50 units in the building had bed bugs. The canine service had discovered an infestation in the unit above the tenant's. On June 5, 2009, the tenants unit was again treated as were the other affected units.

The tenants and landlord provided summaries of treatment dates as follows:

Treatments	
March 25	2 nd treatment by pest control company
April 3	3 rd treatment by pest control company
April 17	4 th treatment by pest control company
May 28	Canine inspection service provided
June 5	5 th treatment - tenant's unit plus other units
June 15	6 th treatment - Tenant sees evidence of more bites – landlord offers 1 month's rent as compensation plus laundry costs and hotel, based upon receipts
June 26	Units in building treated, tenants had vacated
October 8	Canine fails to discover any pest in the unit the tenants had vacated

Where treatment dates differed from the submissions given during the hearing, the dates contained in the pest control invoices supplied by the landlord as evidence were referenced for accuracy.

The tenants testified that they were constantly disturbed by having to prepare for pest control treatments, despite the failure of the landlord to provide pre-treatment instructions.

Photographs submitted as evidence indicated that the tenants both negatively reacted to bites which they submit were caused by the bed bugs; this was not disputed by the landlord. The female tenant's bites became enlarged and swollen; some photographs showed in excess of 20 bite marks over small areas of skin.

The tenants submitted copies of letters they gave the landlord; 1 dated May 22, 2009, which outlined the history of the pest problem and what the tenants found to be

unsatisfactory methods of treatment. The tenant's letter indicated the problem had recurred since November, 2008, that the unit had been unfit for comfortable habitation over the past 4 months and that treatment had resulted in the female tenant experiencing an asthmatic attack as a result of the treatment products.

The tenants submitted that the constant presence of bed bugs resulted in them fleeing to a hotel just prior to the June 5, 2009, treatment. A car was rented at this time, to allow completion of laundry and other necessary travel.

The tenants provided copies of health records for the female tenant, commencing April 2, 2009; when the emergency nursing notes indicated it was the tenant's 3rd visit seeking an opinion in relation to red spots and swelling she was experiencing. On June 5, 2009, the notes indicated the swelling was caused by bites all over her body; the diagnosis determined these were bed bug bites.

The tenant provided numerous photographs of their rental unit which showed the disruption that the repeated treatments caused; the need for on-going laundry, covering of belongings and absence from the unit immediately following treatments.

The tenants provided a list of property they discarded as they did not wish to take those items that could be infested with bed bugs to their new residence rented in July 2009. Property such as furniture, lamps, bedding, a vacuum, mirrors, computer printer and a painting were disposed of and valued at \$4,130.00. The tenants also hired a pest control company to bring in a canine to check for bugs in their new rental unit; a receipt for this cost was supplied.

The tenants submitted a breakdown of their claim:

Rental car February 28 – March 3	123.73
Garbage and sandwich bags for clothing	10.95
Basic bedding, replace pillows	29.10
Medication for bites	30.10
Mattress covers	100.80
Laundry for affected fabric – 90 lbs	76.50
Medication	17.83
Laundry detergent	12.64
Laundry	76.50
Hotel June 4 – 6	328.55
Laundry detergent	13.98
Compact Freezer – for non-washable property	301.89
Latex gloves – cleaner for treatment of property	7.03
Legal aid consultation	28.00
Bed frame	259.82
Replace pillows, shower curtain rod, laundry detergent, cleaning pads, fabric softener, hangers, latex glove, shower	89.43

curtain	
Toilet brush and holder, bleach	6.37
Remove infested property to dump	168.00
K 9 inspection at new residence	131.25
Mattress (August 8)	179.99
Loss of personal property	4,130.00
Sub - total	6,198.96
Loss equivalent of rent paid February – July inclusive	6,000.00
Loss equivalent to rent paid for new residence, July	1,195.00
Sub-total	7,195.00
TOTAL CLAIM	13,393.96

Receipts for costs claimed were supplied for each item, except the mattress purchased in August, 2009.

The tenants testified that the on-going problem and the failure of the landlord to appropriately respond to the infestation resulted in a loss of value to the tenancy, caused pain and suffering, mental distress, humiliation and the loss of self confidence.

The landlord testified that when the bed bugs had been reported the male tenant had recently been employed as one of their relief managers and that he would have been well-aware of the protocol in relation to bed bugs and treatment preparation.

The landlord provided copies of a bed bug notice given to individual occupants of the building, who would then sign the reports and return them to the landlord. The notices indicated that there had been reports of bed bugs and the landlord wished to be notified by all tenants of any concerns in relation to bugs. The notice informed tenants that an infected unit had been treated by a pest control company and asked tenants if they had experienced any bites or saw evidence of bugs. The notice described the bug's appearance and stated if any tenant experienced bed bugs the landlord would immediately treat the unit. Tenants were to sign the notice and to indicate if they had concerns. On November 18, 2008, the female tenant signed a notice indicating that she did not have any concerns.

The landlord provided copies of the same bed bug notices signed between January 2, 2009, and March 4, 2009; none of which indicated any current bed bug reports. A number of surveys completed from September, 2009 onward, were submitted as evidence that the landlord continued to address bed bug issues.

The landlord provided copies of invoices and reports of pest control visits made between July 1, 2007 and June 26, 2009. The landlord testified that they took every step they could to deal with reports of bed bugs in units and that it was in the landlord's interest to keep all units pest-free. The landlord used a reputable company with many years of experience and followed the recommendations made in relation to treatment schedules and treatment follow-up.

The landlord submitted copies of 2 letters given to the tenants; dated June 15 and September 30, 2009. The first letter was in response to a meeting held with the tenants on June 8 and 2 meetings with the pest control company held on June 10, 2009.

The June 15, 2009, letter stated the landlord had taken a proactive role and performed due diligence in their attempts to deal with the bed bugs. The neighbouring unit had been treated and other occupants had been surveyed. Treatments had occurred and follow-up treatments had been completed within the recommended time-frame of 10 to 14 days apart. The landlord indicated the canine inspection revealed 5 of 50 suites as having bed bugs and that the unit above the tenants was found to be infested and treated, along with the units beside theirs. The tenants had requested compensation in the sum of \$5,052.33; the landlord offered compensation in the sum of \$1,000.00 plus laundry and hotel costs based on receipts; the tenants did not accept this offer.

The September 30, 2009, letter reiterated the landlord had acted on advice from the professional pest control company and that bed bugs are ubiquitous in the city of Vancouver. The landlord then offered their past tenants \$1,658.85 in the spirit of good will, should the tenants agree the matter was settled. The offer expired on October 31, 2009, without the tenants signing to accept. The tenants applied requesting compensation on March 11, 2011.

The landlord's witness is the Canadian quality assurance manager for a pest control company with many years of experience. The witness provided affirmed testimony that for the past 3 to 4 years standard treatments for bed bugs include preparation by vacuuming and steam and the use of an approved pesticide that is applied as required by legislation.

The witness provided affirmed testimony that legislation allows treatment only when there is confirmed evidence of bed bugs in a unit and this must be verified by the pest control company that is licenced to use the pesticides. Follow-up inspections occur in order to determine if there is any sign of the bugs. Treatment is not recommended any earlier than 2 weeks after a prior treatment, as any eggs that hatch within 10 days of a treatment will be affected by the product previously applied. Neighbouring suites would be inspected for signs of pests and, if found, treatment would be recommended. Use of the pesticides is prohibited by legislation, unless pests are confirmed. The pest control company now has 3 dogs that are trained to inspect; they have a high success rate. The witness stated that no one can determine where the pests originate and that studies show less than 3% of the population react to bites, with signs of bites taking up to 10 days to emerge.

The witness stated that they do not direct people to dispose of their belongings; although the witness could not say, in response to a question by the tenants, if he would have allowed their belongings into his home.

Once the canine found bed bugs in the neighbouring unit, above the tenants, that unit was treated. The landlord stated that 2 double units and 3 other units in close proximity to the tenants were treated. None of those occupants had reported any pest problems and it was not until the dog discovered the pests that treatment could occur.

The landlord did not deny that bed bugs had been present in the building; this was evident from the notices given to tenants, requesting they report any signs of bugs; one of which the tenants had signed in November 2008, declaring no issues in their unit. The landlord testified that the male tenant had previously lived in another rental, just prior to moving into their building, which also had bed bugs.

The landlord tried to be proactive, to follow-up and take the advice of the professional pest control company. Treatments were delayed somewhat during May, 2009, as the tenants were insisting the landlord use a different pest control company, combined with the fact that during this time there were no reports of any bed bug activity.

The landlord stated they have long-term tenants, some of whom have lived in the building since 2007, who find the landlord to be diligent in their attempts to control the pests.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenants to prove the existence of the loss claimed and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenants did everything possible to address the situation and to mitigate the damage or losses that were incurred

There is no dispute that the tenants suffered as the result of the presence of bed bugs. The female tenant in particular, appears to have been one of 3% of the population who experience significant reactions to bed bug bites; there is no doubt that she found this disturbing and humiliating.

The tenants have provided receipts for items they purchased and a list of personal property they disposed of, due to the fear it was infested with bed bugs. Verification for most purchases claimed has been provided. There was no evidence of any costs related to replacement furniture.

I have considered the response of the landlord in relation to what, if any, compensation would be due to the tenants for the inconvenience the bed bug infestation caused; by assessing the landlord's actions against the requirements of the Act.

Section 32 of the Act provides, in part:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

There is no evidence before me that the landlord failed to adhere to health, safety or housing standards required by law. There was no evidence before me of any Orders issued by local health authorities, in relation to inadequate pest control measures or any other concerns that placed the landlord in breach of this standard.

I find that bed bugs were acknowledged by the landlord, that the landlord took reasonable steps to address the problem by following the advice of a professional pest control company in both assessment and treatment of the problem. The landlord carried out tenant surveys in order to establish evidence of bed bug problems; these surveys pre-dated the time when bed bugs became evident in the tenant's unit. The landlord also utilized a canine service and treated the units that were discovered to have bugs but had not been reported by the occupants.

I have also considered the tenant's claim and the landlord's response in relation to section 7 of the Act, which provides:

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find, on the balance of probabilities that the efforts made by the landlord in addressing the bed bug problem was sufficient and that there is no evidence that the landlord failed to comply with the Act, regulations or tenancy agreement. I found the testimony of the landlord's witness convincing; he was able to provide information on the life cycle of the bed bugs, accepted treatment protocols, information on reactivity to bites and the period of time bites may take to emerge. I found this testimony valuable in my assessment of the infestation and landlord's response.

There is no evidence before me that other occupants complained of any bed bug problems during the time in question. Upon learning of the initial report of bugs the landlord had immediately provided 4 consecutive treatments, as recommended; then a period of time passed when no evidence of bugs were found; followed by the canine service when the bugs were discovered in 5 of 50 units.

The tenants submitted that Residential Tenancy Branch policy applies:

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

I find this to be a reasonable stance when considering the need for renovation or repair. The tenant's have claimed the equivalent of a complete and total loss of use of their rental unit from February to July, 2009, inclusive; plus the first month's rent paid at a new rental unit, as the result of the presence of bed bugs. There was no evidence before me that the tenant's failed to have use of their rental unit during this period of time. They did choose to go to a hotel for 3 days, due to the presence of bugs and the bites suffered; but that decision was made without evidence of any discussion with the landlord in relation to alternate accommodation.

There was no evidence before me of any discussions in relation to ending the tenancy early, moving the tenants to another unit or any other solution that would have removed the tenants from the unit. The tenants chose to remain in the unit for 2.5 months beyond the end date of their fixed term tenancy; despite the highly unusual reactions that the female tenant experienced to bed bug bites. The tenants also have a responsibility to mitigate any loss that they claim and I find that the evidence indicated the tenants knew as early as February 26, 2009, that they were being bitten and that female tenant had significant reactions to the bites. It was not until the tenants became dissatisfied with the need for prolonged treatment that they vacated the unit.

Even if I considered the presence of bed bugs in the same light as required repairs or renovation I find that it is not the origin of the bugs, but the response of the landlord once they were made aware of the bed bug infestation that was critical. Neither the landlord nor the tenants can determine the origin of the infestation; the question is, did the landlord respond to the problem as required by the Act.

I find that the landlord did respond appropriately, demonstrated by the use of a professional pest control company, following recommended and legislated use of pest control products. Six treatments occurred between March and June, 2009; there was no evidence before me that the tenants did not have use of the rental unit during this time, outside of very short periods when the application of treatment product was made; an expectation that is not unreasonable.

Therefore, taking into account the evidence before me, I find that the tenant's have failed, on the balance of probabilities, to prove their claim for compensation.

Further, I find that the tenants have failed to support their claim for aggravated damages, as the tenant's reaction to the bed bug bites cannot be considered the result of negligence on the part of the landlord. There was no evidence that convinced me, on the balance of probabilities that the landlord's response amounted to negligence or a breach of the Act that would entitle the tenant's to compensation.

Therefore, the tenant's claim is dismissed.

Conclusion

The tenant's claim 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: September 08, 2011.

Residential Tenancy Branch