



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 convened by way of conference call in repose to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on April 01, 2011. The tenant pays a rent contribution of \$328.00 per month.

The tenants advocate states that the tenant was not warned that this building had a problem with bedbugs or the tenant's room in particular when she took possession of her rental unit. After the tenant took possession of the unit she discovered a bed bug infestation. The tenants Advocate states the tenant has had 15 treatments arranged or completed. The Advocate states the tenant was told she must cooperate to prepare her room for treatments. The Advocate states the landlord has claimed the tenant did not cooperate and prepare her room after the first four or five treatments but the advocate states the landlord should have offered the tenant some assistance to do this as the tenant is disabled.

The tenant's Advocate states that this was a pre-existing problem before the tenant took possession and the tenant notified the landlord of the bedbug problems she has encountered. The tenant has also provided other witness letters from other tenants who are experiencing the same bedbug issues. The Advocate states the tenant did tell the landlord that she is not prepared to ensure her unit is prepared for treatments again and while the tenant understands it is her responsibility to prepare her unit it is also the landlords responsibility to address the bedbug issue in a timely manner.

The tenants advocate states the landlord did offer the tenant another unit to use while treatments took place but this offer was withdrawn and the tenant was told she had to make other arrangements. The tenants Advocate states this is difficult for the tenant to do as she has a cat. The Advocate contends that it is unreasonable for the landlord to expect the tenant to find somewhere else to stay every few weeks due to the frequency of the bedbug treatments. This has affected the tenant's right to quiet enjoyment of her rental unit.

The tenants Advocate refers to the list of treatments provided by the landlord in evidence and states that some show the technician only treated the box spring and that the unit is cluttered so some treatments have either been cancelled or only partially done. After December 21, 2011 and the steam treatments carried out, no further bedbugs have been found. If the landlord had conducted these full treatments earlier it

would have saved the tenants loss of quiet enjoyment, damage to her furniture and the resulting health problems she has experienced. The tenant has suffered from anxiety and agitation and a sedative has been prescribed by her doctor.

The tenants Advocate states that bedbugs migrate from unit to unit. Other tenants have been living with this problem for at least two years and one tenant has had their unit sprayed 24 times in a two year period. If the landlord does not act expediently or does not treat neighbouring units the bedbugs will migrate.

The tenant testifies that she has had to throw away her bed frame and table due to the bedbug feces and blood and there is also evidence of bedbug eggs, feces and blood on the tenant's armoires. The tenant seeks to recover the costs to replace these items of \$1,000.00 for the bed frame, \$500.00 for the kitchen table, \$1,000.00 for two armoires. The tenant testifies that as she also had to wash her clothing and bedding in hot water and dry them on a high heat this also caused some of her clothing and bedding to become ruined due to the multiply treatments. The tenant seeks to recover \$500.00 for this loss.

The tenant testifies that the dog used to trace bedbugs found activity in her queen sized mattress. The technician only steam cleaned the tenants couch and not her mattress or box spring. These items have been covered in plastic to prevent any of the bedbugs getting out. The tenant seeks to recover the sum of \$2,000.00 for her queen sized bed. The tenant testifies that her bed frame, the queen sized bed and the armoires were eight years old, the kitchen table was an antique, and the clothing was of various ages.

The tenant testifies that she could not fully prepare her unit when she first moved in as there were moving boxes everywhere and she was not notified of the respite unit.

The landlord testifies that the situation with bedbugs is everywhere and is not based on a landlord's actions or neglect. The landlord testifies that the tenant was provided with a package at the start of her tenancy with information concerning bedbugs in the building

and that any problems must be reported to the landlord. Once advised of an infestation or sighting of bedbugs the landlord calls in the pest control company to eradicate the problem. As bedbugs are so resistant to treatment the methods used do require a lot of cooperation from the tenants in order to be successful. The landlord testifies that prior to this tenancy this unit had been vacant and had been treated three times. No bedbug activity was found in the unit prior to this tenancy commencing.

The landlord testifies that the tenant sent the landlord a note which simply stated "bugs". Treatment was arranged quickly. The tenant cancelled the second treatment arranged for April 27, 2011. In order for a treatment to be successful the second treatment must take place as scheduled. On May 04, July 20, August 03, August 19, September 07 and October 13, 2011 some treatments took place but the unit was not fully treated due to a lack of preparation of the unit by the tenant. On August 27, August 24, October 05, October 07 and November 09, the treatments were cancelled due to either the tenant not complying with correct preparation of the unit or the tenant's cat being in the unit. On August 31, September 14, and September 21, 2011 some treatments took place however the unit had not been prepared 100 percent for treatment. On December 07, 14 and 21, 2011 the unit had been fully prepared and successful steam treatments were carried out in the unit.

The landlord testifies that there is only so much they can do as landlords to assist a tenant. The landlord will provide bed covers, laundry bags, a respite unit and beds for a tenant if a tenant requests these things. A technician will provide advice on whether a tenant's furniture can be salvaged and to date the technician has not advised that the tenant's furniture cannot be salvaged and the tenant has not asked for bags to dispose of any furniture. The landlord agrees there is a recommendation to replace one dresser and a headboard. The landlord testifies that the tenant was offered bedbug covers on September 07 but she refused this offer and on September 22, 2011 the tenant changed her mind and accepted the covers. The tenant was also offered a respite unit to use while treatment took place however as there was still evidence of bedbugs this offer had to be rescinded due to the risk of spreading bedbugs to the respite unit.

The landlord testifies that they have not been neglectful in addressing the situation and the tenant has provided no evidence to support her claim of damage to her furniture or the costs to replace her furniture. The landlord refers the tenant to the tenancy agreement in place in which there is a liability waiver and advice for the tenant to ensure she has adequate insurance coverage for her belongings.

The landlord testifies that the dresser could not be fully treated as the tenant had not removed her clothes from the dresser. The landlord cannot now be held responsible for the cost for replacing the dresser.

The landlord testifies that the tenant did not fully cooperate throughout the whole process of treatments. When the tenant did cooperate the bedbugs were eradicated in three treatments. If the tenant had cooperated at the bringing of the process the issue with the bedbugs could have been resolved in a more timely manner as successive treatments could have been carried out.

The landlord testifies that they are ever mindful of the bedbugs migrating to other units and adjoining units are canine checked for the presence of bedbugs on a weekly basis. If bugs are found then adjoining units would also be treated. All treatments of other units are confidential to other tenants due to privacy factors. If adjoining units are occupied then those tenants must be notified that a treatment will take place and they have to be given time to prepare their units for treatments. The landlord testifies that over half of the units in the building have been treated on a regular basis; this number is now dropping as the treatments have become successful.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the tenants claim for compensation to replace her furniture,

clothing, and bedding; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 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 claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet the components of the above test. The tenant has not submitted sufficient evidence to support her claim of \$5,000.00. The tenant has provided no evidence to show that her belongings cannot be salvaged; the tenant has not shown that the landlord acted in a negligent manner by not dealing with the bedbug infestation in a timely manner; the tenant has provided no verification of the actual amount required to replace her belongings if they were unsalvageable; and it is my decision that the tenant did not mitigate her loss by fully cooperating with the landlord by ensuring her unit was fully prepared for each treatment. The tenant cannot expect preparation of her unit to fall to the landlord and if the tenant was unable to meet the requirements called for to prepare her unit for treatments the tenant should have relayed on outside sources to assist her due to her disability.

Conclusion

I HEREBY FIND the tenants claim for a Monetary Order for money owed or compensation for damage or loss is dismissed without leave to reapply.

As the tenant has been unsuccessful with her claim I find she must bear the cost of filing her own 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: January 09, 2012.

Residential Tenancy Branch