



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit for health or safety reasons pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord, who is actually the primary tenant for this rental home, confirmed that she received the tenants' (her sub-tenants') written notice to end this tenancy sent by the tenants by registered mail on March 22, 2012. The landlord also confirmed that she received a copy of the tenants' original dispute resolution hearing package sent by the tenants by registered mail on March 22, 2012. She also received a copy of the tenants' amended dispute resolution hearing package sent by the tenants by registered mail on March 26, 2012. I am satisfied that the tenants served the landlord with these documents, and the parties provided copies of their written evidence to one another in accordance with the *Act*. Although some of the evidence submitted on the landlord's behalf was received by the tenants after the 7-day period for receiving new written evidence had expired, the tenants said that they have received this evidence and were prepared to address the landlord's late evidence at the hearing.

Preliminary Issues

A preliminary matter arose as the landlord entered written evidence that she was only the caretaker of this rental property. She maintained that all issues involving tenants were handled by the owner of the property (the owner), MK, who attended the hearing and wished to participate.

The parties confirmed that the only signed tenancy agreement in place enabling the Applicants to reside in these rental premises was between the tenants and the respondent, the landlord in this application. The first sentences of this agreement read as follows:

The official rental agreement is in CDG's name who presently sublets the above address.

CDG will be subletting the above address to CMC and NF...

The parties agreed that the landlord and the tenants signed the tenancy agreement prior to the commencement of this sub-tenancy. They also confirmed that they signed the one page "Information and Conditions for New Tenants" when this tenancy agreement commenced. Notwithstanding the relationship between the landlord and the owner of the property, I advised the parties that the only tenancy agreement in place with the tenants is between the tenants and the landlord, identified in their application as the Respondent. As such, any action to be taken in response to the tenants' application could only be directed at their landlord, who herself was the primary tenant in her relationship with the owner of this rental property. While I recognized that the owner was keenly interested in what transpired in this hearing, he had no status as a party in this hearing. Since his evidence was still very important to the matters before me, the landlord asked that the owner be sworn in as her witness with respect to the tenants' application.

At the commencement of the hearing, the tenants withdrew their application for a monetary award because they had not proceeded to have the premises treated for bedbugs. I withdrew their application for a monetary award as requested.

Issues(s) to be Decided

Should an order be issued to the landlord requiring her to undertake emergency repairs to this rental unit? Should an order be issued to the landlord requiring her to undertake repairs to this rental unit? Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy for all but three of the rooms in the basement of this rental home commenced on March 15, 2011. The landlord retains two of the rooms; the owner of the home gave undisputed oral testimony that he retains one of the rooms in the basement that he uses as his "dark room." Monthly rent is set at \$1,145.00, payable in advance to the landlord on the first of each month. The landlord continues to hold the tenants' \$572.50 security deposit and \$572.50 pet damage deposit both paid on March 15, 2011.

The tenants said that they are hopeful that they will be able to vacate the rental unit by April 30, 2011, the date specified in their written notice to end their tenancy. Although they have paid a security deposit for the premises they have rented elsewhere, they said that they are concerned that the current bedbug infestation in their rental unit may prevent them from moving their possessions to that rental property.

The tenants applied for an order requiring the landlord to undertake pesticide treatment of their rental premises. They testified that the female tenant first started receiving bites from unknown sources in late January 2012. The tenants testified that the female tenant attended a walk-in medical clinic on February 6, 2012 where she learned from the doctor who examined her that she had bedbug bites. The tenants testified that they attempted to address their bedbug problem by spraying their rental premises using commercial products that they obtained for this purpose. They said that they also obtained covers for their mattresses and pillows, and used sprays and powders to alleviate the bedbug problem. They testified that they believed that they had rid the premises of bedbugs until the female tenant received additional bedbug bites on or about March 12, 2012.

The tenants testified that they provided the first notification to the landlord that they were encountering a bedbug infestation on March 14, 2012. At that time and until the owner of the property advised them that he was only interested in their providing a special "thermal treatment" of the infestation, the tenants proceeded with their own arrangements to retain a pest control company to spray their rental premises. They intended to pay the cost of this treatment and seek compensation for their expenditure through the dispute resolution process at this hearing. The tenants did not dispute the sworn testimony of the landlord and the owner that the tenants have not paid outstanding rent. It would appear that they originally intended to direct their outstanding rental payment towards the pesticide spraying they were planning to undertake. However, as the thermal treatment was much more expensive than the standard treatment that they were planning to secure, they advised the landlord a few days before this hearing that they had cancelled the spraying of their premises and were asking the landlord to obtain the requested pesticide treatment of the premises.

Analysis

I should first note that I do not consider pesticide spraying for bedbugs as a repair that falls within the category of "emergency repairs" as set out in the *Act*. While bedbugs are certainly a nuisance and cause problems for tenants who have sensitivity to such bites, I find that they are not "necessary for the health or safety of anyone or for the preservation or use of residential property" nor do they fall within the range of repairs identified in section 33(1)(c) of the *Act* which reads as follows:

33(1)(c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,*
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
- (iii) the primary heating system,*
- (iv) damaged or defective locks that give access to a rental unit,*
- (v) the electrical systems, or*
- (vi) in prescribed circumstances, a rental unit or residential property...*

I dismiss the tenants' application for emergency repairs without leave to reapply as I do not find that their application falls within that section of the *Act*.

Much of the written and sworn oral testimony with respect to the tenants' application involved speculation as to the source of the bedbug infestation and the time period between the tenants' first awareness of the problem and the tenants' March 14, 2012 notification to the landlord. While the tenants are the sole tenants in this rental home, it is highly unlikely that speculation on how the home became infested can lead to any definitive determinations on how or why the bedbugs came to be present in the rental unit. Unfortunately, bedbugs are becoming more prevalent in rental properties. Once premises become infested, solutions are expensive.

At this stage, there is no dispute that the rental home has bedbugs and pest control treatment is necessary. The application currently before me is limited to the tenants' request that an order be issued to the landlord requiring the landlord undertake repairs in the form of pest control treatment to alleviate the bedbug infestation in the rental unit.

Section 32 of the *Act* reads in part as follows:

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.

Section 28(b) of the *Act* also provides tenants with a right to freedom from unreasonable disturbance.

As I find that pest control treatment is necessary in order to comply with the landlord's obligations under section 32(1) of the *Act*, I order the landlord to retain a qualified pest control professional to treat the rental unit for the bedbug infestation within 7 days of the issuance of this decision. If the landlord does not commence a professional program of pest control to treat this infestation within 7 days of the issuance of the decision, I authorize the tenants to retain a qualified pest control professional to treat the rental unit for bedbugs. If the landlord's failure to comply with the above order requires the tenants to hire their own pest control professional to treat the bedbug infestation, I allow the tenants to withhold their rent until such time as they have recovered their costs for this treatment program.

I find that the tenants are entitled to recover their \$50.00 filing fee from the landlord as they have been partially successful in their application. In order to implement this portion of this decision, I allow the tenants to retain \$50.00 from any outstanding rent that they currently owe the landlord or from their next scheduled monthly rental payment.

Conclusion

The tenants' application for a monetary award is withdrawn.

I dismiss the tenants' application for an order requiring the landlord to undertake emergency repairs without leave to reapply.

I order the landlord to retain a qualified pest control professional to treat the rental unit for the bedbug infestation within 7 days of the issuance of this decision. If the landlord does not commence a professional program of pest control to treat this infestation within 7 days of the issuance of the decision, I authorize the tenants to retain a qualified pest control professional to treat the rental unit for bedbugs. If the landlord's failure to comply with the above order requires the tenants to hire their own pest control professional to treat the bedbug infestation, I allow the tenants to withhold their rent until such time as they have recovered their costs for this treatment program. Once the tenants' costs for the treatment program have been reimbursed through this process, the tenants' monthly rent will revert to that established in their tenancy agreement.

I order the tenants to withhold \$50.00 from any outstanding rent that they may owe the landlord or from their next scheduled monthly rental payment as a means of recovering their filing fee for this 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: April 04, 2012

Residential Tenancy Branch