



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TURNER MEAKIN MANAGEMENT CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC FF

Introduction:

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 28, 32 and 67 for compensation for disturbance of his peaceful enjoyment due to an infestation of bedbugs which caused his unit to be uninhabitable.

SERVICE

The tenant gave sworn testimony that they served the Application for Dispute Resolution personally on the landlord and the landlord agreed they received it. I find that the landlord is served with the Application according to section 89 of the Act.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord through act or neglect violated the Act or the tenancy agreement and caused problems for which he should be compensated? If so, to how much has he proved entitlement?

Background and Evidence:

The landlord, tenant and witnesses attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The evidence is that the tenancy commenced on July 1, 2014 and is currently on a month to month basis, rent is \$666.26 a month as of July 1, 2015 and was \$650 before that. The tenant is requesting a rent refund of 6 months rent to compensate him for inaction by the landlord to address a bed bug problem which was so severe that he had to vacate his unit from May 23rd to July 7, 2015. He said he could only use his unit to get his laundry and to occasionally use the shower. In a prior hearing in July 2015, the parties made a settlement agreement on a treatment plan for his unit; the tenant made no monetary compensation claim and was given leave to reapply. This hearing is a result of his new application.

The landlord provided a detailed timeline of events pertaining to the claim. It was documented that the tenant called the landlord regarding bed bugs in his unit on February 12, 2015. The landlord emailed their Pest Control contractor that same day and requested that they contact the tenant regarding treatment. The timeline shows the landlord and the pest control company tried repeatedly to contact the tenant from February 17, 2015 to March 6, 2015 but there was no answer and no voice mail option. It is undisputed that the Pest Control company served a

Notice of Entry on March 3, 2015 for treatment on March 6, 2015 and the initial treatment was done.

After March 6, 2015, the evidence of the parties is conflicting with respect to contact and treatments. The tenant says he got no notice of a second treatment and it was never done. The landlord enclosed as evidence an invoice from the Pest Control company of a second treatment on April 29, 2015. The owner of the Pest Control company gave evidence. She said she attended to this unit herself and on the week of March 23, 2015, she did 3 other units in the building but when she opened this tenant's door, the unit was not prepared so she could not do the second treatment. The tenant said he got no notice of entry for treatment. The landlord said they either serve a notice of entry or have the contractor speak directly to the tenant. The Pest Control owner/ contractor said she spoke to the tenant personally and although he said she could come, he did not prepare. The tenant denies this and said he would have prepared if he had received any notice but he did not. He said he was not contacted until May after he called on May 13, 2015 to enquire about timing of treatments in order to be effective. He said the Pest Control company never said they had done a second treatment but just said it was needed. His next treatment was done on July 7, 2015 by another Pest Control company per the settlement agreement made at the hearing on July 6, 2015.

Both parties provided documents in support of their evidence. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 of the *Act* requires a landlord to maintain the building in a state of repair that complies with health, safety and housing standards required by law; and...makes it suitable for occupation by a tenant. I find undisputed evidence that there was a bed bug infestation in some units in the building from before the date of this tenancy as it is supported by a 2014 invoice for treatment by this Pest Control company. I find this tenant suffered from a bed bug infestation in his unit dating from February 2015. However, there is conflicting evidence on whether or not the landlord neglected to attend to this in a diligent manner. The tenant maintains there was no contact except for one missed call whereas three witnesses of the landlord attest to trying to contact the tenant numerous times concerning treatment without success. I note this evidence is consistent with that of the landlord in the previous hearing and part of the settlement

agreement was the tenant providing an email address for primary communication. The tenant testified in that hearing also that he was unable to reside in the unit since the end of May 2015 and he was given liberty to reapply for compensation for the months of May, June and July 2015 as a consequence of the alleged bed bug and mice infestation. The tenant said several times in the hearing that he was only claiming 6 weeks refund of rent for the period from May 23rd to July 6, 2015.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find that although the tenant has proved he suffered from a bed bug infestation, he has not provided sufficient evidence to show this was the result of an act or neglect of the landlord. I find the landlord's evidence more credible that they tried to contact the tenant repeatedly concerning treatment without success as three different witnesses of the landlord gave sworn testimony of their attempts to contact him. I find the weight of the evidence is that the landlord has a contract with a pest control company and as the landlord pointed out in the hearing, it is illogical that they would not attempt to diligently treat this one tenant's unit; I find this supports their account of trying continually to contact the tenant without success. I find the fact that the landlord immediately scheduled the other Pest Control company on July 6, 2015 after a reliable means of contact was established in the previous hearing and that they served two Notices of Entry for July 7 and 15, 2015 for treatment, supports the landlord's testimony that they want to act diligently on these matters to prevent it spreading throughout the building but were prevented by their inability before July 2015 to contact the tenant by telephone or knocking on his door and he had provided no other means of contact.

Therefore, pursuant to section 7 of the Act, I find the tenant has provided insufficient evidence that the landlord violated the Act and caused his problems with the bed bug infestation between May 23, 2015 and July 6, 2015 by not addressing the situation promptly. Therefore, I find him not entitled to compensation of a refund of rent as I find he did not meet the onus of proving the landlord through act or neglect caused the problem for which he seeks compensation.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. I find him not entitled to recover the filing fee due to his lack of success.

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: October 07, 2015

Residential Tenancy Branch

