



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNNYLAND INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ERP RP RR MNDC FF

Introduction

Both parties attended the hearing and gave sworn testimony. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. The landlord submitted late evidence to the Residential Tenancy Branch yesterday and the tenant said he did not receive it. I find the Application was served legally pursuant to section 89 of the Act for the purposes of this hearing. The late evidence is given very limited consideration after discussing the relevant dates on the invoices with the tenant. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord do emergency repairs pursuant to section 32; and
- b) That the landlord repair and maintain the property pursuant to section 33;
- c) A rent rebate or other compensation for loss of peaceful enjoyment due to neglect or repair; and
- d) To recover filing fees for this application.

The tenant confirmed that the repairs had been completed as of April 10, 2017 and he had seen no mice activity after March 31, 2017 which was one week subsequent to having the hole behind the dishwasher filled on March 25, 2017. Therefore he no longer seeks orders for repair. He requests compensation for loss of amenities, for cost of food and loss of peaceful enjoyment for the period of time that the unit was not repaired.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord neglected to maintain the property contrary to sections 32 and 33 of the Act and that they suffered loss due to this lack of repair? If so to how much compensation are they entitled?

Background and Evidence

Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that

the tenancy commenced in November 2014, rent is \$1398 and a security deposit and pet damage deposit totalling \$1350 was paid in 2014. The tenant outlined the problems which stemmed from a mouse infestation. He emailed the landlord on February 3, 2017 about the mice problem in the unit, the landlord arranged for the handyman to fill some holes and for a pest control company to come on February 20, 2017. They said this was the earliest the pest control company was available. The tenant contended that the handyman refused to pull out the dishwasher where there was a fist sized hole. He said it was not until another service installing appliances came on March 25, 2017 that this hole was filled. He said there was a decrease in activity and the problem was resolved a week later. The landlord said pulling the dishwasher involved disconnecting pipes and the handyman could not do that on the initial visit.

The pest control company made three follow up visits until April 10, 2017 when they confirmed the problem was resolved. The tenant said he did not see them but the previous manager said she arranged to let them in at the time. As a result of the ongoing mouse activity, the stove and dishwasher suffered damage. The mice were entering the stove insulation and nesting. As a result, the tenant said there were mouse droppings and a stink inside the oven so it was unusable. He supplied graphic photographs of the insulation being pulled into the top burners by the mice. The landlord replaced the stove and dishwasher pipes on March 25, 2017 after the tenant notified them by email on March 18, 2017 of those appliance problems. The landlord points out that they spent \$1034.25 on pest control and \$756 on new appliances.

The tenant seeks \$1500 compensation for

- (1) food destroyed by mice; later they kept it in glass jars,
- (2) \$300-\$400 for the cost of eating out for one week while the stove was unusable
- (3) loss of use of their kitchen because of mice feces (the kitchen is about 15% of the unit; and
- (4) neglect of repair of the hole behind the dishwasher for two months contributing to the ongoing problem of dealing with mice entry.

The landlord said they did all they could but the tenant should bear some responsibility for they have 2 dogs and they left food out. The tenant said no dog food was left out and they sealed their food in glass after it started being destroyed by the mice.

Included with the evidence are many emails, photographs and evidence provided late from the landlord of invoices for treatment and appliances. The tenant supplied no invoices of his costs. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the weight of the evidence is that there was some neglect of the landlord to act in a timely manner to solve the mice infestation. Although the tenant notified them of the problem on February 3, 2017, Pest Control did not attend until February 20, 2017 for their first visit. Both parties agreed the landlord filled some holes before February 20, 2017 around the heater and oven but the tenant maintains they refused to fill the large hole behind the dishwasher that turned out to be the main source of their problem. He said they wanted to wait and see. The landlord said it is a problem to move the dishwasher because of the pipes but the tenant pointed out that a renovation service did it on March 25, 2017. I find on examining the invoice that the renovation service was replacing the dishwasher supply pipe at that time so I find it most probable that the handyman could not do it earlier as he claimed. I find due to the delay in treatment the tenant suffered some loss. I find the delay in treatment until February 20, 2017 caused loss of their peaceful enjoyment for over two weeks. I find them entitled to compensation of a 10% rebate of rent or \$139.80.

However, the tenant supplied no invoices to confirm the value of the loss as required by section 7 of the Act. Residential Policy Guideline 16 states: *An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.* Therefore I award them a nominal sum of \$100 for lost food and cost of eating out for a week. I find they did try to minimize the lost by enclosing food in glass jars.

I find the weight of the evidence is that they essentially lost the use of their kitchen and oven for a period of time. I find the unsanitary conditions of mice feces in the kitchen

and stove existed for over a month. As the kitchen is about 15% of their space, I find them entitled to a rent rebate of 15% for one month or \$209.70.

I find the weight of the evidence is that the additional time lost in the unit due to the hole behind the dishwasher was not caused by neglect of the landlord. I find once they obtained the pest control services, they employed them for the necessary follow up treatments. I find the weight of the evidence is that they had to wait for another company to install a pipe and move the dishwasher. I find the tenants not entitled to compensation for this additional month as the landlord was acting diligently to resolve the issues and so did not cause additional loss through act or neglect.

Conclusion:

I find the tenants entitled to compensation as calculated below and to recover their filing fee. The compensation is awarded as a rent rebate as set out in the below order.

Neglect of timely treatment 10% rebate	139.80
Nominal sum for unproven food costs	100.00
Loss of use of kitchen amenities	209.70
Filing fee	100.00
Total Compensation to Tenant	549.50

I HEREBY ORDER THAT THE TENANTS may recover their awarded compensation by deducting \$549.50 from their rent for June 2017.

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 26, 2017

Residential Tenancy Branch

