



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord.

The hearing was conducted by teleconference on August 2, 2017, October 26, 2017 and February 1, 2018. Both parties were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Naming of Landlord

The Landlord named on the tenancy agreement (which was filed in evidence) was P.I.R. The named Landlord, S.L., who identified as the Building Manager, signed the tenancy agreement on behalf of P.I.R. and confirmed that at all material times he acted on behalf of P.I.R. He also confirmed that P.I.R. was aware of the proceedings and he was authorized to act on their behalf.

When filing his application for Dispute Resolution the Tenant named the building, F.V.R.H. and the Building Manager, S.L.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Tenant's Application for Dispute Resolution to accurately name the Landlord as P.I.R.

Preliminary Matter—Amount of Claim

Counsel for the Tenant advised that the Tenant's claim exceeded the amount of rent paid. He confirmed the Tenant wished to reduce the Tenant's claim to \$2,550.00 representing the total amount of rent paid.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

Counsel advised that the tenancy consisted of serial two month fixed term tenancies commencing originally November 1, 2016; continuing on January 1, 2017 and finally on March 1, 2017. A copy of the final agreement was provided in evidence. Monthly rent was \$425.00.

Counsel confirmed that the Tenant vacated the rental unit prior to the expiration of the final two month term on April 1, 2017.

Filed in evidence was a monetary orders worksheet confirming the Tenant sought return of all of the rent paid during his tenancies.

The Tenant testified as follows. He stated that the day after he moved into the rental unit, on November 2, 2016, he discovered bed bugs in his rental unit. He stated that he woke up and found 23 bugs on his body; this caused him to scream which alerted a neighbour who rushed to his unit to check on him.

The Tenant testified that the rental unit is furnished in that it included a mattress, box spring, table, chair, dresser, mini fridge and micro wave and a lamp.

The Tenant stated that he told the Landlord about the bed bugs in his room immediately upon discovering the problem. He said that in response, the Landlord's representative, S.L., came into the rental unit and told the Tenant to vacuum and get white sheets and a white comforter to help identify the bedbugs.

The Tenant testified that he asked S.L. if the Landlord had fumigated and S.L. stated that he could not afford to do the entire building and that they only treat one room at a time. The Tenant stated that he informed the Landlord that the entire rental building needed to be fumigated to which S.L. again responded that he would only do one room.

The Tenant confirmed that his room was fumigated in December however the problem persisted as the rest of the building was not treated. The Tenant stated that the problem was in everyone else's room as well and that during their "morning smoke" the other tenants all talked about who was bitten the night before. He also claimed that the building was infested with mice and rats and the Building Manager failed to address this issue as well.

The Tenant introduced in evidence numerous photos and videos of the rental unit taken by the Tenant. The Tenant testified that he took photos and video within the time he resided in the rental unit. The Tenant also submitted a photo of a message he wrote on the white board as he claimed the Landlord stopped talking to him and this was the only means he had to communicate with the Landlord.

The Tenant stated that prior to moving into the rental unit he did not have any issues with bedbugs. He stated that he previously resided with friends and at a homeless shelter.

The Tenant stated that he had limited options as to where to live as his only source of income was income assistance as a person with a disability and that his rent was paid directly to the Landlord.

Counsel submitted that the Tenant was not able to simply move out and instead relied on the Landlord to comply with the *Act* and maintain the building as required. Counsel further submitted that the photos and videos submitted in evidence show photos of bedbugs, rats in traps etc. and a general lack of maintenance by the Landlord.

The Tenant confirmed that when he vacated the rental unit he disposed of all his personal belongings, save and except for some of his clothing (which he had cleaned at an industrial cleaners).

The Tenant confirmed that he paid rent for six months but he only resided in the unit for five months. He stated that the only reason he moved out was because people from his church opened their home and invited him to live with them.

The Landlord responded to the Tenant's submissions as follows.

The Landlord confirmed that they have had issues as a result of the clientele housed at the rental unit. He stated that when it transitioned into affordable housing, and the hard to house, they have had issues with "critters" as they have guys who go "binning". The Landlord stated that they treat the units immediately as requested.

The Landlord stated that in terms of the Tenant's allegation that the rental unit was infested with rats, the Landlord alleged that the Tenant retrieved a rat from a trap outside and brought it into the rental unit to give the impression the building was infested. The Landlord claimed the rat was caught outside and was enticed to the building as another renter was feeding squirrels.

The Landlord disputed the Tenant's claim that he was limited in his housing options due to his financial situation. The Landlord stated that in fact he hired the Tenant as a janitor at another property and therefore was aware that the Tenant had \$4,000.00 in additional income over and above his disability income at that time. Further, the Landlord alleged that the Tenant also had income from performing stand-up comedy.

The Landlord further disputed the Tenant's testimony that he requested the Landlord deal with the bed bugs. He noted that the Tenant was meticulous in his record keeping, yet only provided evidence of the one request he made on the white board. The Landlord stated that when he saw the white board, he dealt with it the next day. He further noted that in the three months that the Tenant was residing at the rental unit after the treatment, he did not raise this issue with the Landlord any other time. The Landlord stated that on one occasion he saw a bed bug on the Tenant's collar and asked him if he was having problems, at which time the Tenant slammed the door in his face.

The Landlord also submitted that the Tenant did not launder his bedding regularly and did not participate in the on-site laundry service, which is provided to the occupants to have their sheets laundered weekly. He provided a letter in evidence from T.B., the staff member who did the laundry, who confirmed that the Tenant did not participate in this service.

The Landlord also noted that the video evidence provided by the Tenant is taken over a two week time period from March 4-21, which is at the end of his stay and after three months of neglect and three months of not requesting services. The Landlord stated that the Tenant simply neglected his rental unit, then waited until the end and made this application for return of all the rent paid.

The Landlord stated that all the Tenant had to do was ask for further treatment and he would have attended to it.

Counsel for the Tenant cross examined the Landlord regarding the Landlord's protocol for dealing with pests. The Landlord stated that the main protocol is to call L.P.C., a third party pest control company. Counsel for the Tenant submitted that the Landlord's protocol is to have the rooms sprayed individually. In response, the Landlord stated that the individual rooms are sprayed, after which the pest control company enquires if there are problems in adjacent rooms, as well as fumigating the common areas. The Landlord noted that it is not practical or reasonable to move 37 people into a hotel room to have the entire building fumigated and then have someone bring them in the next day on a piece of furniture, or clothing. The Landlord submitted that this was not a reasonable request. He noted that what was reasonable was for the Tenant to make a request for fumigation treatment, to participate in the laundry service, and to regularly clean his room.

The Landlord denied counsel's suggestion that the Landlord refused to deal with the Tenant's requests due to a personal issue between the Landlord and the Tenant.

The Landlord confirmed that since the Tenant moved out, he has had the room sprayed two more times to get the situation "under control". He confirmed that he would have had this done months ago, and during the tenancy, had the Tenant brought this to his attention. The Landlord also noted that he saw the Tenant daily as the Tenant worked for him. He confirmed that had the Tenant had issues, he should have brought them to the Landlord's attention.

Counsel noted that the Tenant complained at the beginning of his tenancy at which time the room was fumigated and after he left. The Landlord responded that this was the case, but the important point was that the Tenant never informed the Landlord that he continued to have issues with bed bugs after the initial fumigation.

Counsel also brought to the Landlord's attention a letter dated February 22, 2017 wherein the Landlord instructed the Tenant's to vacuum and questioned whether this

was adequate. The Landlord responded that this was a recommendation of the pest control company.

The Landlord called T.B. as a witness on February 1, 2018. He confirmed that he is responsible for the laundry service at the rental building. He confirmed that he knew the Tenant. He further confirmed that the laundry service is provided every Tuesday for the resident's sheets and bedding, so that they "can keep an eye on the situation with the bugs." T.B. stated that there are certain rooms that do have or have had bed bugs in them. He stated that every Tuesday morning, the tenants put their bedding into a clear plastic bag, he takes the bedding downstairs and launders it, then returns the bedding to them.

S.L. asked T.B. what the next step was when bugs are observed. T.B. stated that the next step is to call the pest control guy or use heat treatment within a day or two of observing the bugs.

S.L. asked if T.B. used the laundry service. T.B. stated that he believed that the Tenant used the service once, at the end of his tenancy. T.B. stated that to his knowledge the Tenant was in residence approximately five to six months. T.B. confirmed that he notes on a chart who uses the laundry service, and what he observed. He stated that in addition to this checklist sheet, he also spoke directly to S.L. to inform him that the Tenant was not using the laundry service.

T.B. stated that when he washed the Tenant's sheet he observed bed bug activity including droppings, bugs and blood splatters. He stated that precautions are taken to prevent the spread of bed bugs in the laundry room including sealing each bag and putting the sheets immediately in the laundry tub with chemicals. He stated that the temperature of the water and the heat of the dryer is what kills the bugs and the eggs.

T.B. confirmed that he viewed the photos and videos submitted by the Tenant and stated that only twice in three years has seen conditions as depicted in the Tenant's photos and videos and suggested the conditions were a result of not cleaning for weeks.

T.B. confirmed that he does not have an expertise in treating bed bugs and has not received any training whatsoever.

T.B. also confirmed that the Tenants also have access to the laundry service such that they can wash their clothes and sheets whenever they like.

In reply to the Landlord's submissions, the Tenant testified as follows.

The Tenant confirmed that he washed his sheets and his clothing every week. He stated that he paid the money on his own, and did it himself because of the manner in which T.B. did the laundry. The Tenant stated that T.B. washed all the sheets together and then put the sheets back in the plastic bag from which they came, even if the sheets had bed bugs in them.

Tenant denied moving the rat trap from outside into the common hallway.

The Tenant stated that the "Integrated Pest Management for Bedbugs in Multi-Unit Dwellings" document submitted in evidence confirmed the Landlord should have treated the entire building.

The Tenant also stated that he looked for alternative accommodation, but it was very difficult to find accommodation on his limited income.

In closing the Tenant's counsel submitted as follows:

In each successive tenancy the Landlord is bound by section 32 of the *Act* and that he must maintain the rental building. Failure to deal with the systemic bed bug problem was a failure to comply with section 32.

Counsel noted that one of the barriers to treatment is treating it as a suite, rather than a building problem, as well as blaming or shaming tenants, which counsel submitted was exactly what the Landlord was doing.

In terms of the law of mitigation, Counsel for the Tenant submitted that it doesn't lie in the mouth of defendants or people who breach the rights of others to require the non-breaching party to take certain steps or to be overly critical of how they manage the breach. The tenant is expected to do what is reasonable to minimize their loss, not everything. A tenant cannot be expected to end their tenancy as that would be an unreasonable requirement. Counsel submitted that in any event, the Tenant did mitigate his loss by laundering his own sheets and clothes. He also complained to the Landlord verbally and made a request on the white board. He stated that he was met with some resistance and eventually started looking for a new place to live.

In terms of compensation, counsel submitted that a full refund of the sixth month of rent is appropriate as he was no longer able to live in the rental unit and that he should be entitled to a substantial refund of rent paid for the prior five months.

Counsel suggested that the problem was allowed to linger by the Landlord and as such the amount should increase over time.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

After careful consideration of the evidence before me, on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that his rental unit was infested with bed bugs. The photos and videos submitted by the Tenant confirm this infestation.

The issue before me is whether the Landlord breached their duties under the *Act* to address the bed bug infestation, and whether the Tenant is entitled to monetary compensation.

The Tenant alleges that he spoke to the Landlord about the bed bug infestation on numerous occasions. The Landlord denies such conversations occurred although conceded that on one occasion he asked the Tenant if he was having problems to which the Tenant responded by swearing at the Landlord and slamming his door.

The evidence suggests that the Tenant made one written request for treatment by writing a complaint on a white board. The Landlord confirms he received this request and treated the unit immediately thereafter. This was not disputed by the Tenant, although the Tenant testified that the treatment was ineffective.

A tenant is granted exclusive occupancy of a rental unit pursuant to a tenancy agreement; this right is protected by section 28 of the *Act* which protects a tenant's right to quiet enjoyment.

A landlord is responsible for maintaining a rental unit and attending to pest control. However, the ability of a landlord to attend to required repairs and maintenance inside a rental unit, including pest control, depends on effective communication with a tenant, as a landlord is limited in their ability to enter the rental unit.

In the case before me, I accept that the Landlord was made aware of the bed bug issue by way of the message left by the Tenant on the whiteboard. I further accept the Landlord attended to this by hiring a third party to fumigate the Tenant's room.

There was insufficient evidence before me to show that the Tenant communicated with the Landlord *after* this treatment to advise that the treatment was unsuccessful. In addition, the Tenant failed to participate in the weekly laundry service which may have alerted the Landlord to continued problems.

While the fumigation of the individual room may have been ineffective, it is equally likely that it would be successful. The success of the treatment and presence of bed bugs within the rental unit after treatment was information within the control of the Tenant. In all the circumstances, I am unable to find that the Tenant informed the Landlord that his rental unit continued to be infested with bed bugs after the initial treatment. I therefore find the Tenant has failed to prove the Landlord breached his obligations under the *Act* and I dismiss his claim for return of the rent paid.

Conclusion

The Tenant's application 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: February 28, 2018