Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of $6,696.00 for damage or compensation under the Act; and to recover his $100.00 Application filing fee.

The Tenant, his advocate, J.S. ("Advocate"), the Landlord, and an agent for the Landlord, G.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2012, with a final monthly rent of $558.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $190.00, and no pet damage deposit. They confirmed that the Landlord still holds the security deposit, because the Tenant did not provide his forwarding address for the return of the security deposit. They agreed that the Tenant vacated the rental unit on October 20, 2022.

In the hearing, the Advocate explained the Tenant's claim, as follows:

> For loss of quiet enjoyment. For two disturbances. Basically, the presence of rats under the unit, through the walls, and in the attic. There were rat droppings and a stench left behind by the rats that was not dealt with. The Tenant first reported it in writing on October 1, 2021; see Exhibit 6. The rats were there until he moved out on October 3, 2022. He was living in another place by October 20th, although he still had to deal with some things at the unit.

Exhibit 6 is an email from the Tenant to the Landlord dated October 1, 2021. This email includes:

> For the past week there has been a lot of chewing and tapping noises coming from my ceiling. I have a rodent infestation probably the rat I previously witnessed possibly a squirrel.

The Tenant then provided the Landlord with a URL for information from a BC government site about steps to be taken in this situation.

A later email from the Tenant to the Landlord dated November 5, 2022 indicates that the Landlord provided rat traps, which have worked, but which the Tenant indicates that he finds offensive; the subject line of this email: "15 Year Rodent Infestation Stop Torturing Helpless Animals".

In the hearing, the Agent responded to the Tenant's testimony, as follows:

> Noting Exhibit A(a), the situation was brought to our attention on September 1, 2021, in a meeting between [the Landlord] and [the Tenant] regarding a rat seen in the rafters. It was brought to my attention the next day, September 2nd.

I asked the Agent what steps he or the Landlord took to resolve this problem. The Agent said:

> Reading from Exhibit A(a) – strategies put in place to … rat radar traps were installed around the unit. [The Tenant] refused to have these in his home, because of his sensitivity to them. On October 10 to 21, 2021, we continued work with the handyman, [M.L.] ["Handyman"]. On January 25th, more work was to be done outside work on installing a rat barrier.

In Exhibit A(a), the Agent wrote:

> I spoke with [the Tenant] around strategies to deal with the trouble on September 3rd. [The Tenant] indicated to me that he did not want rat poison used.
> …
> We did ongoing preventative measures. We tried our best to work with [the Tenant] in regard to addressing his complaints. We believe that we have provided and maintained [the Tenant] a residential property in a state of decoration and repair that is in compliance with the [Act].

In Exhibit A(a), the Landlord set out the steps taken to resolve this situation, including:

> The problem was recognized immediately and strategies/action were put in place.
>
> - The area was cleaned;
> - Rats were caught and disposed of;
> - Rat traps were installed outside of the home and checked daily by our handy person;
> - A breached hole was secured;
> - The roof cavity was inspected;
> - Nesting material was removed and the roof vacuumed;
>
> . . .
>
> [The Tenant] was not helpful during the whole process of addressing his complaint. We were refused entry to do a condition inspection on July 8, 2022. We tried to do an inspection on August 24, 2022 when I was told to leave. Due to

> verbal aggression of [the Tenant] towards me, an RCMP officer was called and was on-site to keep the peace. A condition inspection was conducted on Oct 20/2022. There was no evidence of rat droppings, rats, or offensive odors. [The Tenant] signed off on this report.

I asked the Agent if they were able to get rid of the rats, and he said:

> We addressed the issue in a timely manner. Rat traps were put out, a rat radar was installed. There was a conversation between [the Handyman] and [the Tenant] re emptying and re-baiting the traps. [The Handyman] said [the Tenant] was up to the task, capable, and willing. The breached hole in the roof was repaired and secured, and the evidence is in the email I just quoted – see Exhibit C and Exhibit E and N – of photos by the contractor, and [the Landlord].

I asked the Tenant how he wanted the Landlord to get rid of the rats, given the Tenant's disapproval of traps and poison. The Advocate said:

> Read through over view. [The Tenant] lived with a rat infestation and the consequences… he moved out on October 3, 2022. No effort was made to clean the excrement… [The Tenant] reports an unbearable stench… he was told to continue trapping and disposing of the rats.
>
> Section 32 of the Act says that a landlord has to maintain the property in a proper state of repair. There were inadequate fixes; the fixes occurred on October 10th, not September 10th. They did not use a specialist. Material soiled by rats was not cleaned. This continued to plague [the Tenant], and on January 19th, they finally investigated it….
>
> A contractor communicated the severity of problem to Landlord, telling him to close up holes, and that solid material would need to be replaced. But they switched the responsibility to the Tenant… As a result, he secured alternate housing.
>
> The Landlord's actions caused the Tenant's quiet enjoyment to be lost.
>
> He's asking for compensation from October 1, 2021, to October 3rd, 2022; he's asking for 12 months' rent.
>
> The Tenant wanted an exterminator – see evidence in the Tenant's overview at

point 8, in an email where he is really frustrated trying to get the Landlord's help. It was neglectful of the Landlord to refuse to hire a professional exterminator.

In the BC government website – the Tenant provided a link – poison as a last resort. Also, there are multiple pest control companies that don't use poison. Such as [S.] – in [the town] - they don't use any poison at all. They didn't use a professional exterminator.

The Agent responded:

The first point, repairs were made. Preventative measures were introduced, rats were disposed of and the traps checked daily by [the Handyman]. The hole was filled. He was never told that he was responsible to trap the rats.

Second – yes, [he did not use a professional exterminator].

Third – the repairs by [the Handyman] on October 10th to 20th – see Exhibits C and N. They hired [the O. company], but they only do chemical control – but this was rejected by [the Tenant].

Fourth, there was an inspection by a busy inspector – see Exhibit N – a photo of work done by the contractor [A. company]. They also gave recommendations for repairs, but they were unable to commit to until Spring.

Five . . .

Six, there was no shifting of responsibility. [The Tenant's] perceived cooperation re baiting and emptying traps. He said he was capable of doing this.

Seven – yes, he secured alternate housing, after the Landlord having served a letter of expectation on March 9, 2022.

There was an [RTB] dispute ruling against the Tenant he was ordered to vacate [the residential property] via an order of possession provided to the Landlord.

My last point – it was all addressed in a timely manner. He refused us entry on a July 8th inspection. On August 24th, he told us to leave. [The Tenant's] verbal aggressiveness – we had to have a police officer on site to keep the peace. There was no evidence of rats or offensive odors – see Exhibit P – [the Tenant]

> signed off [on the move-out condition inspection report, which did not refer to rats or rat droppings].

The Landlord then made similar points to those of his Agent.

The Tenant's Advocate first referred to an email dated January 19, 2022, that the Tenant submitted, which was from a contractor, "L." to the Landlord, and copied to the Agent and the Tenant. This email states:

> In my professional opinion. We need to take care of this unit sooner then later. When I was on site today. I had a great chat with [the Tenant]. I'm now seeing the bigger picture of this problem. And can now understand The frustration he is going through.
>
> We need to take ceiling down from inside and replace, damaged or affected areas of insulation and possibly rodents. There may be a lot of poop and pee up in there. I can try to save materials to put back in. But if damage from removal and rodents, it will need to be replaced. We also need to close in underneath like mentioned in [the Tenant's] earlier emails.
>
> When I was there today. [The Tenant] and I removed a deceased rat that was in a trap.
>
> [Landlord] how do you want to proceed with this ?

The Advocate referred to the Landlord's reply to the above email, which stated:

> If the attic needs to be cleaned and sealed, do the job. Glad you are on the job!
> [The Handyman] did not report a build up in the attic that needed this attention!
> The delays have been too long and now we are a team!
> [Tenant] please return the cabinets back where you found them when the job is done.
> I have not had it confirmed if the Rat Radar is plugged in and I have asked for info for several weeks now.
> I am glad to have the timely info. as you proceed.

The Advocate said:

> However, repairs were never finished, and the roof was never opened up.

> He mentioned the roof was cleaned, but according to their own evidence the bill from [the Handyman] saying it was vacuumed, so no material was replaced, no sanitizing, or deodorizing that a professional would do.
>
> A breached hole was secured, but as you can see from the mid-January inspection by the contractor, there were all sorts of ways that rats were getting in. See in Exhibit 10, that even as late as May 26, they are telling him "If I had issues with rats, I buy the traps, … we have provided traps and your responsible to do the rest…."

This email from the Agent to the Tenant and Landlord dated May 26, 2022, states:

> Howdy [Tenant],
>
> As a renter if I have issues with ants, mice etc. I purchase traps and/or poison. I bait the traps and dispose of any carcasses.
>
> You are a renter and are tasked to do the same procedures.
>
> We have provided traps. It is your responsibility to do the rest.
>
> We have spent time and money on preventative measures in addressing your rat problem.
>
> [Agent]

The Tenant said:

> [The Agent] says – you are responsible to keep your unit clean and sanitary. He also assigned two workers to patch holes. Your part – baiting traps, disposing of carcases, etc.
>
> The contractor was there on January 19th and 25th; however, the contractor never finished the work as described and can be seen in Exhibit 9 – the first page, second email [the Landlord] says it's up to now [the Handyman] who's waiting for snow to clear. This was on April 23 – eight months after the rat was first spotted. Now they're saying that snow is the problem? If you moved the snow you could do the work.

The Agent said:

> We submit that reasonable steps were taken, in spite of the Applicant's lack of cooperation. We tried to do inspections but, we were stonewalled, asked to leave, and had to bring in an RCMP officer to keep the peace. We did do ongoing preventative measure. Repairs were made.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

Policy Guideline #6, "Entitlement to Quiet Enjoyment" states:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
>
> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.
>
> **Compensation for Damage or Loss**
>
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.
>
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The Parties agree that there were rats in the residential property. The Tenant bears the onus of proving that the presence of these rodents was caused by the Landlord's failure to maintain the rental unit in a condition suitable for habitation.

The Landlord has asserted that they did everything possible to eliminate this problem and prevent it from happening again. However, they said that the Tenant rejected their efforts to use professional pest control companies who used chemicals or rat traps. It is not clear how the Tenant expected the Landlord to remedy this problem without those tools, which I find are more likely than not standard techniques for removing rodents.

As set out in section 7 of the Act and Policy Guideline #5, "Duty to Minimize Loss":

> A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.
>
> . . .
>
> Compensation will not be awarded for damage or loss that could have been reasonably avoided.
>
> . . .
>
> Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss.. . . In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

However, the email evidence noted above indicates that there was still a rat problem in May 2022, and that the Agent was placing the responsibility for ending this problem with the Tenant.

Policy Guideline # 1, “Landlord & Tenant – Responsibility for Residential Premises”, states:

> The landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

In the case before me, I find that both Parties contributed to the rat infestation continuing for longer than it should have. The Landlord had a means suggested by the contractor “L” in January 2022 of what needed to be done to remedy all aspects of the problem; however, the Landlord did not pursue this option. Rather, pursuant to the Agent’s email of May 2022, the burden was left to the Tenant to resolve, ultimately. I, therefore, find that the Landlord breached section 32 of the Act, which requires a landlord to maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law…which make it suitable for occupation by the tenant. I find that the rental unit was not suitable for occupation from September 2, 2021 to at least May 2022. As such, I find that the Tenant has provided sufficient evidence to prove the first step in the Test.

However, the Tenant did not indicate why he should be reimbursed for a year of rent, because of the Landlord’s breach of the Act – was the Tenant not able to use the rental unit at all? That is not in evidence before me. Further, I find that the Tenant failed the

fourth step of the Test in that he did not do what was reasonable in the circumstances to minimize or mitigate the damage or loss.

Policy Guideline #16, "Compensation for Damage or Loss" ("PG #16") authorizes an arbitrator to award compensation, in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Given my finding that the Landlord breached section 32 of the Act, but that the Tenant did not mitigate his damage or loss, I find it appropriate to **award the Tenant** a nominal amount of **$700.00** or approximately ten percent of his claim for enduring a rodent infestation in the residential property for too long. This award is made pursuant to PG #16, and sections 32 and 67 of the Act.

Given the Tenant's limited success in his Application, I decline to award him recovery of the **$100.00 Application filing fee** from the Tenant. **This claim is dismissed without leave to reapply.**

Conclusion

The Tenant is partially successful in his Application, as he provided sufficient evidence of the Landlord's breach for an award of approximately ten percent of the claim, or **$700.00**. The Tenant failed to mitigate his loss, by refusing standard rodent removal techniques from the Landlord's set of tools for dealing with this problem. The Tenant's claim for recovery of the **$100.00** Application filing fee is dismissed without leave to reapply.

I grant the Tenant a **Monetary Order** from the Landlord for **$700.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 27, 2023

Residential Tenancy Branch