

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord acknowledged receipt of the Proceeding Package and Evidence and did not note any concerns with regards to the timing or nature of service.

The Tenant acknowledged receipt of the Landlord's Evidence and did not note any concerns with regards to the timing or nature of service.

Preliminary Matters

This hearing was reconvened following a previous decision dated January 10, 2024, in which an Arbitrator determined that a multi-tenant joint application needed to be separated due to the differing circumstances with each tenant.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for compensation loss under the Act, regulation, or tenancy agreement under section 67 of the Act?

Is the Tenant authorized to recover the filing fee for this application from the Landlord under section 72 of the Act?

Background and Evidence

As per the submitted Tenancy Agreement, the tenancy began on August 1, 2015, with a monthly rent of \$880.00 and Security Deposit of \$440.00. The current rent is \$1100.00

per month. A Pet Deposit was paid during the tenancy in the amount of \$500.00 per month.

Due to pest control issues the Landlord contracted a pest control company to eradicate the pests. The following visits and corresponding notes regarding the rental unit were made:

- February 6, 2023- Inspection Only
 - Minor sanitization, spilled food and standing water
 - No hoarding
 - No live cockroaches found during inspection
- March 9, 2023- Treatment Appointment
 - Unit not prepared for treatment (no attempt made or unable to treat due to pets in unit)
 - Minor preparation performed; cabinets emptied.
 - Aquarium left plugged in and running. Unable to track down tenants to unplug and cover.
 - Closets and baseboards not emptied.
- March 22, 2023- Treatment Appointment
 - Bedrooms, living room, dining room, hallway not prepared
 - Bathroom and kitchen partially prepared
 - Cluttered
 - Live cockroaches found in kitchen

The Landlord served the Tenant with an undated Notice stating that her rental unit did not meet the minimum sanitary standards leading to pest related issues. The Notice states that the Tenant's last chance to rectify the issue would be March 22, 2023, and that failure to make payment and rectify the condition of the unit would result in a One Month Notice to End Tenancy.

On April 11, 2023, the Landlord served the Tenant a Notice indicating that on February 8, 2023, her unit did not meet the building's minimum requirements for cleanliness or clutter. On March 16, 2023, a preparation sheet was provided by building management to ensure arrangements could be made for the unit to be ready for treatment, however the Pest Control Technician report from March 22, 2023, stated that the Tenant failed to appropriately prepare the unit. As such, the Landlord was holding the Tenant responsible for costs associated with pest control inspections or additional treatments needed. It is noted that the Notice puts significant emphasis on the Tenant's responsibility to maintain reasonable health, cleanliness, and sanitary standards. The Notice states that the Tenant owed a Pest Control Chargeback Amount of \$236.25.

The tenant submits that during the March 9, 2023, appointment her adult son was in the rental unit and no one asked him to rectify any issues. She states that he was asked to leave the unit so they could start the treatment. The Tenant also reports that no one attempted to contact her to discuss the fish tank or ask that she return to unplug it.

The Tenant disputes not preparing the unit for March 22, 2023, and states that it is a small apartment so she did her best to move items, but it remains cluttered despite her best attempts. The Tenant submits that the landlord and pest control company are being nitpicky and uncooperative.

The Landlord submits that clear directions were provided to the Tenants with regards to the preparation of the rental units for the treatments. The Treatment Preparation form specifically addresses preparation of fish tanks and terrariums, that this is a liability issue for the contractors and a requirement on the part of the contractor.

The Landlord indicated that they were not able to discuss availability with the tenants as the treatments were completed by floor, with an entire floor being scheduled for one day. The Landlord indicated that the Tenants were provided with three days notice.

The Landlord provided a copy of the preparation sheet, a summary of the preparation requirements are as follows:

- Remove all items from kitchen cupboards, drawers, countertops
- Remove all items from bathroom cupboards and drawers
- Declutter
- Vacuum baseboards
- Move all furniture at least 2 feet away from walls
- Empty closet and storage room
- Remove all electrical and light switch covers
- Unplug all fish tanks and terrariums and cover with a tight fitting towel or sheet

The tenant paid the Landlord the \$236.25 chargeback fee on May 14, 2023, a copy of payment activity was submitted into evidence.

Analysis

Is the Tenant entitled to a Monetary Order for compensation loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Under section 7 of the Act if a tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the Landlord for resulting damage or 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. Policy Guideline 5 indicates that a landlord who suffers a loss because the tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In this case the Landlord submits that the Tenant was notified three days prior to the pest control treatments and was provided with clear direction as to how to prepare the

unit. The Tenant submits that no one attempted to contact her during the March 9, 2023, treatment nor did anyone notify her adult son that the fish tank had not been unplugged, the Tenant submits that had this occurred the issue would have been immediately resolved. The Tenant also submits that the preparation requirements resulted in cluttered space and that she felt the unit was appropriately prepared for the treatment.

In consideration of the submissions by both parties, as well as the preparation requirements put on the tenant, I find that the Landlord did not make reasonable efforts to ensure the pest control treatments could occur on the given dates and therefore, did not make reasonable efforts to minimize the damage or loss. In determining this I noted that the Landlord did not make any attempt to contact the Tenant during the inspections to voice their concerns and provide an opportunity for the Tenant to attend the rental unit and make corrections as needed while the pest control company was in the building. I also noted that significant preparation was required, and the Landlord did not reach out to the tenant to confirm that she was able to accommodate the requirements without assistance, such as assistance in moving the furniture or advice as to where or how the pest control would like all the relocated items to be stored. While I recognize that this occurred in a multi-unit rental building, the issues encountered with this Tenant more likely than not would have been resolved had appropriate communication occurred to try and ensure the treatments could take place.

The Landlord did not adhere to the requirements set out in Section 7 of the Act and Policy Guideline 5; therefore, the Landlord's requirement for the Tenant to pay the chargeback fees for incomplete pest treatments does not comply with the Act.

I find that the Tenant is entitled to a Monetary Order for compensation loss under the Act, regulation, or tenancy agreement under section 67 of the Act in relation to the \$236.25 chargeback fee paid by the Tenant on May 14, 2023.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenant authorization to retain \$336.25 of April 2024's rent payment in satisfaction of the Monetary Order requested under section 67 and 72 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 11, 2024

Residential Tenancy Branch