

DECISION

Dispute Codes ET MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to end the tenancy early and to obtain a Monetary Order for money owed or compensation for damage or loss under the *Act*.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 14, 2009. The mail receipt number was provided in the tenant's verbal testimony. The landlord was deemed to be served the hearing documents on March 19, 2009, the fifth day after it was mailed as per section 90(a) of the *Act*.

The landlord, tenant and the tenant's agent appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Preliminary Matters

The tenant applied for dispute resolution on January 16, 2009 and the Dispute Resolution Officer dismissed the tenant's application, without leave to reapply, on February 6, 2009.

The tenant then applied for a review of the previous decision and on February 19, 2009 the Dispute Resolution Officer dismissed the tenant's application for review consideration without leave to reapply.

The landlord contends that the tenant is bringing forth the same issues which were applied for in her January 16, 2009 application.

The tenant's agent testified that the application filed on March 12, 2009 is not for issues which were applied for previously. He stated that the previous application was for a monetary claim to reduce the rent for repairs, services or facilities agreed upon but not provided, to Order the landlord to comply with the *Act*, and request an Order to have the landlord make the required repairs for which the tenant had to endure from August 31, 2008, the onset of the tenancy, to the application date of January 16, 2009.

The tenant's agent testified that the application dated March 12, 2009, is to request an Order to end the tenancy early and a monetary claim of \$1,200.00 for money owed or compensation for damage or loss under the *Act*, and to recover the filing fee.

Based on the foregoing, and the documentary evidence before me, I find that the tenant's application from March 12, 2009 is requesting dispute resolution for different issues than those applied for on the January 16, 2009 application, with one exception, the issue relating to the infestation of mice in the rental unit. As the issue of mice infestation was brought forth on the January 16, 2009 application, an application which was previously dismissed, this issue can only be considered for a period commencing after January 17, 2009.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to End the Tenancy Early pursuant to Section 50 of the *Residential Tenancy Act*
- Whether the tenant is entitled to a Monetary Order under section 67 of the *Residential Tenancy Act* for money owed or compensation for damage or loss under the *Act*
- Whether the tenant is entitled to recover the filing fee from the landlord

Background and Evidence

The tenancy is a fixed term tenancy commencing on August 31, 2008 and expiring on August 31, 2009. The monthly rent is payable at \$1,160.00 and due, in advance, on the last day of each month for the following month. The tenant paid \$580.00 security deposit on July 31, 2008. The tenancy agreement was only issued in the tenant's name, at the request of the landlord, as the second tenant was going to move out and a new one move in during the fixed term, which was agreed to by both parties.

The tenant is submitting a monetary claim to cover moving costs of \$400.00, junk removal fee, to dispose of the couch where the mice have left numerous feces, at \$100.00, loss of quiet enjoyment of \$100.00 per month per tenant as a result of a mice infestation, \$300.00 rent abatement per month for loss of usage and damage to personal property, and \$300.00 to cover the cost of her being able to stay at her boyfriend's apartment at \$100.00 per month for February, March and April 2009.

The tenant entered into evidence, a chronological account of her communication with the landlord regarding her numerous requests to the landlord to hire a professional to deal with the mice infestation in her rental unit, supported by copies of the individual written e-mails and letters. There is also documentary evidence that supports the tenant's testimony that she brought in two separate professional pest control companies to inspect the rental unit for the presence of rodents.

The tenant testified that she contacted Vancouver Island Health Authority and spoke to a Health Inspector, to find out how to properly clean up the mouse droppings and was told to use bleach to wipe up the dropping and to ensure she wore a proper respirator while managing the bleach and feces. The tenant stated that the Health Inspector was going to contact the landlord to discuss the situation. The tenant testified that the landlord told her he was upset with her for contacting the Health Authority.

The landlord testified that the Health Inspector called him on March 10, 2009 but that the inspector told the landlord that mice infestation is not that serious of an issue and that the tenant needed to keep food stored properly and the apartment clean.

The tenant provided documentary evidence in support that she had sought medical attention for symptoms she experienced during her stay in the apartment, but did not experience in other locations. She testified that her physician instructed her to move out of the rental unit and that she gave the landlord a two month written notice that she and her roommate were ending the tenancy effective April 30, 2009. The tenant testified that she tried to have the landlord agree to sign a mutual agreement to end the tenancy early but that the landlord refused, stating that there was no benefit to him to have the tenancy end early.

The landlord did not dispute the tenant's statement that he refused to sign the mutual agreement to end tenancy but did state that after receiving the tenant's written notice that he began to work on re-renting the unit.

The landlord testified that he has been able to re-rent the unit effective May 1, 2009 and the landlord was now agreeing to mutually end the tenancy effective April 30, 2009.

The landlord testified that he did not feel the need to hire a professional pest control company. He stated that he spoke to a professional pest control company over the phone and that he was told to seal up the holes in the apartment and place mouse traps in the apartment.

The landlord testified that the tenant had lied, that the pest control company he spoke to also said that the tenant must be lying, that there was only evidence of a few mouse droppings in her apartment and that he believes the mice were brought into the apartment in the tenant's couch when she moved into the rental unit.

The tenant testified that she continued to write and call the landlord to advise him that the mice problem was continuing, that the remedies the landlord had in place were not effective, and requested that a professional pest control company be hired, but the landlord continued to avoid or ignore her requests.

When asked why he didn't seek alternative measures to deal with the mice, the landlord replied that it wasn't necessary, that traps work if there are mice present, and that the tenant was not cleaning up the mice feces properly.

The Health Inspector was called to testify at the hearing to provide information on the effects of mice and mice feces present in a residential unit. The Health Inspector advised that there are two issues to be considered with the presence of mice and mice feces, first are the Health issues and second are the Safety issues. The inspector stated that although the event of disease transmission from the presence of mice feces is low, the clean up of the feces is important to prevent the spread of the Hanta Virus. The Health Inspector advised that Hanta Virus is created by the dust particles that become airborne if the mice feces settle and dry out. The Inspector advised that the presence of mice creates a safety issue as they tend to chew on wires which can cause electrical fires.

When asked if mice and mice feces could potentially cause respiratory problems, the Health Inspector answered "yes", and continued on to say that the presence of mice constitutes a Health and Safety Issue.

Analysis

The two parties came to a mutual agreement to end the tenancy effective April 30, 2009.

In regards to an Applicant's right to claim damages from the other part, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section

67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the documentary evidence and verbal testimony in relation to the mice infestation in the rental unit, I find that the tenant has succeeded in proving that a damage or loss exists.

I also find that the verbal testimony and evidence supports that the landlord is in violation of Section 32 (1) of the *Residential Tenancy Act*, as he chose not to seek out

alternative methods to eradicate the mice from the rental unit. He refused to hire professional pest control companies, even though the tenant tried to mitigate the circumstances for the landlord by seeking out the professional advice on her own when she had two assessments done on the building by professional pest control companies.

There is no documentary evidence in support of the tenant's claim that she was required to pay \$100.00 a month, to temporarily reside at her boyfriend's residence, for the past four months, nor is there evidence in support of her claim for \$400.00 in moving costs, or the actual cost of disposing of the couch. I find that the tenant has failed to verify the actual amount required to compensate for these claimed losses and dismiss this claim without leave to reapply.

Based on the documentary evidence and verbal testimony, I find that on a balance of probabilities it is more likely than not that, after the previous hearings were dismissed, the landlord ignored the continued communication and complaints from the tenant and chose to ignore the information provided by the Health Inspector when she advised that the presence of mice in a residential unit is considered a "health and safety issue". The landlord also attacked the veracity of the tenant by calling her a liar and stating that a professional pest control company also called her a liar. Based on the foregoing I find that the landlord has breached a material term of the tenancy under Section 32 (1) of the *Residential Tenancy Act* by neglecting to escalate the actions taken to remediate the mice infestation, thus putting the tenant's health and safety at risk.

I find that the evidence supports the tenant's claim that she has endured a substantial devaluation of the tenancy since January 17, 2009, from the continued problems with the mice infestation in her rental unit, the aggravation caused with trying to get the problem resolved, by suffering health related problems and having to relocate as a result. I find that a retro-active rent abatement is justified and applicable to rent already paid from January 17, 2009 (the period this decision begins) up to and including April 30, 2009 (when the tenancy is scheduled to end) reducing rent payable by \$300.00 per month, the rate requested by the tenant. The past rental rate for January 2009 would be

adjusted \$150.00 for the ½ month of January from \$1,160.00 to \$1,010.00 and for the months of February 2009 to April 30, 2009 from \$1,160.00 to \$860.00 per month, reflecting loss of value and usage of the rental unit by approximately 26%. I find the tenant is entitled to a monetary claim of \$1,050.00.

I also find that the tenant's couch is rendered a health hazard as the mice feces cannot be cleaned up with bleach, without ruining the fabric of the couch. I hereby find that, in the presence of the landlord's neglect to remediate the mice infestation, the landlord is now responsible to dispose of the tenant's couch.

I question the condition of the rental unit and find the move out cleaning of the rental unit and the remaining mice feces have the potential to negatively affect the tenant's health, so I find this cleaning to be the responsibility of the landlord. Providing that there be no damaged caused by the tenant moving out, that a full refund of the damage deposit plus interest, be issued to the tenant pursuant to section 38 of the *Act*.

I find that the tenant is primarily successful with her application and is entitled to recover the filing fee from the landlord.

Conclusion

The landlord and tenant have come to a mutual agreement to end the tenancy April 30, 2009.

I HEREBY ORDER the landlord to bear the burden of disposing of the tenant's couch, to clean the rental unit after the tenant vacates the unit, and to refund the tenant her damage deposit pursuant to Section 38 of the *Residential Tenancy Act*.

I find that the tenant is entitled to a Monetary Order, including recovery from the landlord of the filing fee for this proceeding as follows:

Rent Abatement (Jan 2009 \$150.00 + Feb 09, Mar 09, Apr 09 @ \$300.00 per month)	\$1,050.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$1,100.00

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 16, 2009.

Dispute Resolution Officer