



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC

OLC

ERP

RP

RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order compelling the Landlord to comply with the Act, Regulation or tenancy agreement; an Order compelling the Landlord to complete repairs to the unit; an Order compelling the Landlord to complete emergency repairs; an Order allowing a Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Issue(s) to be Decided

1. Whether the tenant submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing :
 - a) that the damage or loss was caused by the landlord acting in violation of the Act
 - b) a verification of the actual costs to repair the damage or compensate for the loss

- c) that the tenant fulfilled the obligation to do what ever was reasonable to mitigate the costs
2. Whether the tenant is entitled to a rent reduction under section 65(1) of the *Act* due to a loss of value of the tenancy. This determination is dependant upon answers to the following questions:
 - Has the tenant offered proof that the value of the tenancy was lowered sufficient to support a reduction in rent or compensation?
 - Has the tenant submitted proof that the landlord was responsible or that the landlord committed a violation under the Act?
 3. Whether the Landlord is in noncompliance with the Act and should be ordered to comply with the Act.
 4. Whether to landlord should be ordered to complete repairs.
 5. Whether to landlord should be ordered to make emergency repairs

Background and Evidence

The Tenant submitted a substantial amount of evidence including copies of communications to and from the landlord, written testimony, copies of information material about carpet beetles, other vermin and pesticides, copies of receipts, estimates and invoices, a copy of the tenancy agreement signed on September 5, 2000, a copy of the move-in condition inspection report, doctor's notes, written witness statements, photographs and detailed itemized lists describing each monetary claim along with the costs.

The tenant testified that there has been a long-standing infestation of carpet beetles in the unit discovered prior to April 2009 and reported to the landlord. The Tenant testified that the insects had destroyed the tenant's clothing, books and other items such as baskets and small appliances. The tenant testified that she consented to treatment by a

pest control professional contracted by the landlord and that fumigation finally took place in June 2009. However, this failed to resolve the problem. The tenant acknowledged that the landlord was prepared to re-fumigate the unit when it was reported that the problem recurred. However the tenant was not willing to permit the re-spraying because there was a substantial amount of preparation work with which the tenant required assistance, due to her physical limitations. The tenant testified that she suffered from a disabling condition which was complicated further by a recent car accident and was therefore unable to complete the extensive preparation work required prior to the second fumigation including:

- Thorough cleaning and disinfecting of all areas in the unit
- Weekly vacuuming of 4 hours per week (estimated to be necessary for 24 weeks)
- Sanitizing, packing and removal of items to be stored
- Disposal of ruined or contaminated items
- Laundering of clothing and linens, (20 extra loads per week for 6 months)
- Purchase of equipment to allow the tenant to be absent from the unit for one week during fumigation
- Replacement of defective windows and doors believed to be the access point for insects

The tenant testified that the measures being advocated were recommended by a pest control company that she felt was more knowledgeable than the contractor currently used by the landlord. The tenant's position was that she should have a say about which pest control company should be used by the landlord.

The tenant stated that the reason she objected to frequent and repeated fumigations as the method for controlling the infestation was because of the tenant's sensitivity to the

chemicals, and fear of repeated exposure to carcinogenic pesticides. The tenant testified that the landlord's proposed strategy of recurring fumigation to eradicate the carpet beetles was not a reasonable course of action due to the tenant's health concerns and the landlord's failure to address the source of the problem. The tenant believes that alternative measures are justified and that the cost for these should be fully funded by the landlord. The tenant submitted a note from her doctor stating that she would need professional help moving furniture and boxes, cleaning and laundry until the carpet beetle problem was permanently resolved. Another note from the doctor in evidence recommended that, due to a sensitivity to the pesticides, the tenant would need alternate accommodation for a period of one week after each course of fumigation.

The tenant testified that the carpet beetle problem was allowed to develop because of deficiencies in the building that were not adequately dealt with by the landlord and alleged that the landlord was not in compliance with section 32 of the Act by failing to maintain the building and the rental unit in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, to make it suitable for occupation by a tenant.

To support the allegation that the building was not being properly maintained as required under the Act, the tenant gave several examples. The tenant pointed out that a carcass of a dead bird had been discovered under the siding of the building near her unit before being removed by the landlord. The tenant felt that this had likely attracted the carpet beetles. The tenant referred to photographic evidence showing holes in the siding of the complex from woodpeckers. While the tenant acknowledged that the landlord had since replaced the siding, the tenant testified that this illustrated the level of neglect in regards to maintenance. The tenant also stated that her patio door had malfunctioned causing the tenant to be locked outside. The tenant stated that even though the patio door was locked, firemen were able to jimmy the door open which shows that the door should have been maintained or replaced. The tenant

acknowledged that the landlord did eventually install a new door handle, but this did not resolve the loose-fit problems and the tenant stated the incident offered some insight into the landlord's shortcomings in regards to maintenance. The tenant complained that the landlord refused to remove bird's nests which are known to attract carpet beetles. The tenant testified that the landlord was not ensuring that common areas were kept adequately clean as illustrated by the photograph of macaroni scattered on the carpeting.

The tenant's position was that the landlord was in contravention of the Act by neglecting to replace the vintage windows that no longer sealed properly. The tenant testified that some ineffectual efforts had been made by the landlord to caulk and putty around gaps around the perimeter of the windows, but these efforts failed. In any case, this step did not address the real problem, which the tenant believed was that the metal frames were starting to disengage at the joints and the tracks allowed too much movement. The tenant was of the opinion that the beetle infestation was caused primarily from issues with the defective windows and doors.

The tenant's claim for compensation for the supplies and services associated with past and future fumigations including labour and materials added up to a total amount of \$10,921.36. The tenant's claim for reimbursement for personal possessions damaged by the carpet beetles as shown on the list submitted into evidence was \$3,069.92. The tenant was also claiming the replacement value for the deficient windows and doors at an estimated cost of \$2,683.25.

In addition, the tenant was requesting a 100% rent abatement until the landlord fully reimburses the tenant for all the claimed compensation relating to upcoming and previously incurred costs and damages to continue until the infestation has been permanently resolved.

The tenant's application originally included a request for an order that the landlord replace the stove that the tenant had alleged would not work properly despite being repaired. However, the tenant stated that the stove was now working fine.

The landlord disputed the tenant's claims and testified that there was no basis to grant compensation. The landlord testified that the building has been well maintained and that the worn siding was replaced. The landlord testified that the pest control company routinely inspects for contamination and fumigates around the exterior of the building on a monthly basis. The landlord stated that it has adequately maintained the building including responding within 24 hours to any vermin problem reported. In fact, when the carpet beetle problem was originally reported by the tenant in April 2009, the landlord was prepared to act immediately. However, the tenant caused the delay in treatment until June 2009. The landlord stated that after the initial treatment, when it was discovered that the problem had returned, the landlord then immediately attempted to arrange a second fumigation but the tenant persisted in not cooperating and has refused to permit the pest control company to treat the unit, unless the landlord first agreed to the tenant's list of demands for financial compensation.

The landlord testified that, although the windows are old and are scheduled to be replaced at some point in the future, they were not deficient to the point that they failed to meet building and safety standards required by law. The landlord challenged the tenant's allegation that the insects were entering through the gaps around the windows. The landlord stated that the fumigation contractor had advised the landlord that the tenant had likely permitted the flying beetles to enter by leaving un-screened windows open.

The landlord pointed out that only the tenant's unit was affected by the carpet beetle infestation. Although there have been problems with silverfish on occasion, no other unit has been contaminated by this type of insect.

The landlord testified that the preparation instructions from the pest control company only recommend that the tenant conduct a thorough cleaning and vacuuming of the unit, laundering of clothing and linens and to ensure that items on the floor are removed. The landlord's position was that these rudimentary preparation measures were solely the responsibility of the tenant and did not fall to the landlord to perform or to pay for. The landlord pointed out that, in an effort to support the tenant, storage space was provided at no cost so that the tenant could remove any items she wanted from the unit.

The landlord submitted evidence including a written chronology of events, copies of invoices for fumigation, reports from the pest control company and a written testimonial signed by other residents regarding the level of maintenance practiced by the landlord. The landlord testified that all reports of infestations of any kind are always promptly dealt with by professional fumigators. The landlord testified that requests for repairs are addressed immediately.

Analysis

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, 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, 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 claimant, that being 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 respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, to make it suitable for occupation by a tenant. 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.

I find that the mere existence of a pest infestation does not constitute proof that either the landlord or the tenant is in violation of the Act. I find that no determination need be made as to who is “to blame” for the source of infestation. There is no question that, under the Act, a landlord is responsible for pest control and a tenant is required to cooperate with the extermination process.

In regards to the tenant's allegation that the landlord has failed to maintain the building and that replacement of the windows and doors of the unit is necessary in order to comply with section 32 of the Act, I find that, other than the tenant's own testimony, there was insufficient evidentiary proof that the rental premises officially failed to comply with the health, safety or housing standards required by law.

I find that the tenant also failed to submit sufficient proof that the carpet beetles were entering through gaps in the windows and doors. That being said, I find that the landlord's assertion that the carpet beetles had flown in through the *open* windows or doors, to be equally unsupported and, even if true, would serve as sufficient reason for the landlord to supply screens to ensure that the unit is not contaminated again.

In any case, regardless of how the insects originally gained entry, I find that the landlord did take action in a timely manner to attempt to eradicate the infestation through qualified professionals in compliance with the Act. I find that the landlord was delayed from the outset and was further thwarted from doing the complete job by the tenant, who admitted that she was still not prepared to approve immediate re-treatment of her unit by the pest control contractors. I find the reason provided by the tenant for refusing the treatment, was not supported under the Act, which requires reasonable cooperation from the tenant. I find that the tenant's expectation that the landlord's duty would go beyond a mere obligation to hire qualified professional exterminators to be an unrealistic expectation. While I acknowledge that the tenant's situation limits her ability to conduct tasks she feels are critical to prepare to deal with the carpet beetle problem, I find that the landlord's duty does not extend to any obligation to assist the tenant by funding external support services. I find that, by engaging pest control specialists to fumigate as needed without undue delay, the landlord has successfully complied with basic obligations under the Act.

Given the above, I find that the tenant is not entitled to be compensated for labour and materials in the amount of \$10,921.36 compensation claimed for the preparation of the unit for fumigation and this portion of the tenant's application must be dismissed.

However, the landlord has committed to supplying garbage bags to the tenant for any further fumigation and has also agreed to ensure that the storage area provided free-of-charge to the tenant will also be treated. The parties agreed to work together to coordinate the timing of the fumigation.

In regards to the tenant's claim to be reimbursed for lost possessions damaged by the beetles, I find that the harm inflicted by the carpet beetles occurred prior to the landlord's knowledge about the infestation and prior to any involvement by the landlord in the matter. I find that this damage did not occur as a result of any violation of the Act by the landlord and therefore the test for damages has not been met. Accordingly I find that the portion of the tenant's application seeking reimbursement for damaged possession in the amount of \$3,069.92 must be dismissed.

In regards to the tenant's claim for the \$2,683.25 cost to replace the windows and doors, I find that under the Act a landlord is always responsible for maintaining, repairing or replacing windows and doors as necessary. While I have already found that the tenant did not prove her allegations that the deficiency qualified as noncompliance with section 32 of the Act, I find that the tenant has raised a serious concern about potentially substandard windows and this should not be dismissed out-of-hand without a proper investigation. From the landlord's testimony, I find that he was relying on the opinion of the pest control technicians in arguing that there was no need for immediate replacement. However, I find that a pest control technician would not necessarily possess the level of expertise necessary to assess the condition of the windows. I find that, in order to comply with the Act, the landlord would need to take reasonable steps to follow-up on the complaint by consulting with qualified experts in the field who specialize in window and door assessments.

Pursuant to a mediated discussion between the parties, the landlord made a commitment to engage the services of a window and door specialist and to obtain a written report or estimate assessing the condition of the windows. In particular, there must be a determination made about whether or not the condition of the windows and

doors would comply with the health, safety and housing standards required by law, having regard to the age and character of the building. The tenant is also prepared to obtain a written opinion from a qualified expert in the field about the viability of the windows and doors and would be arranged by the tenant without cost to the landlord. I find that this should be completed within the next two months.

In regards to the portion of the tenant's application requesting emergency repairs, I find that the complaint about the quality and condition of the windows would not be considered under the Act to constitute an emergency as defined in section 33 of the Act. I find that this portion of the tenant's application must be dismissed.

In regards to the tenant's request for an order that the landlord do repairs, I find that, besides the window controversy, the tenant's complaints and requests for repairs have been responded to in a reasonable manner by the landlord. I find that this portion of the tenant's application must be dismissed.

In regards to the tenant's request for a rent reduction based on the tenant's claims and the alleged failure of the landlord to comply with the Act, I find that there is no basis to reduce the rent. While it may be true that the continued presence of the carpet beetles serves to devalue the tenancy, I find that the delay in re-treating the unit, which was imposed by the tenant, caused or contributed to the insect infestation affecting the tenant's quality of life. I find that this portion of the tenant's application must be dismissed.

In regards to the tenant's request for an order to compel the landlord to comply with the Act, that nothing has been introduced in this application nor during these proceedings to indicate that the landlord is in violation of any provision of the Act or in non-compliance with any relevant law relating to services or facilities. Therefore I find that this portion of the tenant's application must be dismissed

Conclusion

The parties have agreed that the landlord will supply garbage bags to the tenant for use prior to re-fumigation in future and that the landlord will ensure that the storage area is also fumigated. The parties have also agreed that and that the windows and patio doors will be thoroughly inspected by two different qualified experts who will issue written assessments, each to be arranged by the landlord or the tenant. Finally, the parties agreed that the landlord would provide screens for the windows and patio door in the Spring of 2010.

Based on the testimony and evidence in this dispute, I find that the tenant has not sufficiently established any entitlement for monetary compensation from the landlord and has not proven that there is or has been a violation of the Act or Regulation.

Accordingly, the tenant's application for monetary compensation is hereby dismissed without leave to reapply.

December 2009

Date of Decision

Dispute Resolution Officer