

## **Decision**

**Dispute Codes:** OPC, CNC, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with 2 applications: 1) by the landlords for an order of possession, a monetary order as compensation damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee; 2) by the tenant for cancellation of the notice to end tenancy, a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties at the outset of the hearing led to resolution of the aspect of the dispute concerning an end to tenancy. Specifically, the parties agreed that the tenant will vacate the unit by not later than 1:00 p.m., Friday, April 30, 2010, and that an order of possession will be issued in favour of the landlords to that effect.

Issues remaining to be decided concern the application from the landlords to retain the tenant's security deposit, the applications from both parties for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, in addition to recovery of the filing fee.

Pursuant to a written tenancy agreement, the month-to-month tenancy began on June 1, 2008. Rent in the amount of \$760.00 is payable in advance on the first day of each month. A security deposit of \$380.00 was collected on June 1, 2008.

The landlords issued a 1 month notice to end tenancy for cause dated February 10, 2010, a copy of which was submitted into evidence. Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

Subsequently, on February 18, 2010, the tenant filed an application for dispute resolution, seeking in part, to have the notice to end tenancy cancelled.

4 separate breach letters were issued to the tenant dated February 10, February 19, February 22 and March 10, 2010. In some manner or other, each breach letter includes reference to the problem of bedbugs.

The landlords take the position variously, as follows: i) that the tenant's unit was the first unit where a bedbug infestation was found to exist; ii) that the tenant did not take the initiative to report the discovery of bedbugs in her unit to the landlords; iii) that on or about January 10, 2010 the tenant caused the spread of bedbugs to other units in the building by removing an uncovered mattress from her unit and pulling it through interior hallways and onto the elevator, before discarding it in the underground area of the building; and iv) that the tenant's delay in taking action against the bedbugs in her own unit once the infestation became public (ie: steam cleaning her couch), aggravated the infestation within her unit, and contributed to the spread of the infestation to other units.

The tenant takes the position that her discovery of bedbugs in her unit occurred only the night before she removed the mattress from her unit. Further, she states that her reluctance to deal directly with the building manager in regard to the matter is the result of a history of interpersonal tensions between them.

A chronological overview of some of the most relevant events is as follows:

January 10/11, 2010: the tenant removes mattress from her unit.

January 11, 2010: the landlords contact pest control.

January 13, 2010: pest control inspect the tenant's unit and reviewed the "pre-treatment procedure" with the tenant. The tenant was encouraged by the pest control agent to remove the bed and frame "due to high activity."

January 18, 2010: the first pest control treatment was completed in the tenant's unit #204. The tenant was encouraged by pest control to remove the couch or have it steam cleaned. Several other units were inspected by pest control with negative results.

February 1, 2010: a second pest control treatment was completed in the tenant's unit #204. The pest control agent again encouraged the tenant to steam clean her couch.

February 10, 2010: 1 month notice to end tenancy is served on tenant.

February 18, 2010: a third pest control treatment was completed in the tenant's unit. The pest control agent observed that the tenant had vacuumed the couch, however, it had not apparently been steam cleaned.

February 24, 2010: the pest control dog "alerted" in 6 of the 8 units inspected. Tenant had couch steam cleaned.

February 25, 2010: tenant's couch(s) removed.

March 4, 2010: the fourth pest control treatment in the tenant's unit #204; the first pest control treatment in 5 other units.

March 17, 2010: the fifth pest control treatment in the tenant's unit #204; the second pest control treatment in the same 5 other units, as above.

March 24, 2010: following a broad inspection within the building the pest control company declared that the building was free of all bedbugs.

### **Analysis**

While not all particulars set out in the respective documentary submissions by the parties, or positions presented by the parties during the hearing have been reproduced here, I have turned my mind to all aspects of the information provided.

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides as follows:

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.

I find there is insufficient evidence that the tenant was exclusively responsible for the bedbug infestation which was first determined to exist in her unit #204. However, I also find on a balance of probabilities, that the tenant's transfer of her infested mattress through common areas of the building likely caused the infestation later found in other units. I further find on a balance of probabilities that the tenant enhanced the infestation, or impeded its eradication, by not having her couch steam cleaned in a timely manner after being cautioned by pest control personnel to do so.

Following the discovery of the bed bug infestation, I find that the landlords acted in a timely and thorough manner to address the problem.

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I address the landlords' claims and my findings around each as follows:

\$315.00: pest control (January 18, 2010: unit #204). As earlier stated, there is insufficient evidence for me to conclude that the tenant was exclusively responsible for causing the bed bug infestation within her own unit. Accordingly, I find that the landlords are responsible for costs arising from pest control in the tenant's unit. This particular aspect of the landlord's application is therefore dismissed.

\$157.50: pest control. This cost appears to arise out of K-9 inspection of 8 units in total which include the tenant's unit #204. I find that the landlords have established entitlement to \$137.81, which is a 7/8s portion of the total amount claimed.

\$2,242.80: pest control (March 4, 2010: 6 separate units including the tenant's unit #204). Following from the above, I find that the landlord is responsible for costs arising from pest control in the tenant's unit in the amount of \$373.80 ( $\$2,242.80 \div 6$ ).

However, as I have also found that the tenant's action led to infestation in other units, I further find that the landlord has established entitlement to recovery of the balance of pest control costs in the amount of **\$1,869.00** (\$2,242.80 - \$373.80).

**\$2,378.25**: pest control (March 17, 2010: 6 separate units including the tenant's unit #204). As above, while I find that the landlord is responsible for costs related to pest control in the tenant's unit in the amount of \$396.38 ( $\$2,378.25 \div 6$ ), the landlord has established entitlement to recovery of the balance of **\$1,981.87** (\$2,378.25 - \$396.38).

**\$262.02**: full cover, pillows, mattress & pillow covers combined for 2 separate units. While these items were apparently desired by the respective tenants in the affected units, there is no evidence that they were essential. In the result, I find that as they were discretionary purchases and secondary to the eradication of bedbugs, this aspect of the landlords' claim is hereby dismissed.

**\$17.60**: copying and printing. Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlords' application is dismissed.

**\$100.00**: filing fee. As the landlords have achieved some success in their application but, at the same time, successfully negotiated a settlement with the tenant concerning an end to tenancy, I find the landlords have established entitlement to recovery of **\$50.00**, which is half the filing fee paid.

Total amount of landlords' entitlement: **\$4,038.68** (\$137.81 + \$1,869.00 + \$1,981.87 + \$50.00).

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I address the tenant's claims and my findings around each as follows:

\$4,190.00: total approximate assessed value for disposed of furnishings (king size bed, single bed, 3 seated couch, loveseat). In the absence of relevant evidence about these furnishings such as receipts showing value at the time of purchase, demonstrable value of comparative furnishings, age of furnishings, photographs of furnishings, a description of the condition of furnishings at the time of disposal, in combination with conclusive evidence that there was no alternative but to dispose of these furnishings, I hereby dismiss this aspect of the tenant's claim.

\$42.00: recycling blue bags & packaging tape. I find on a balance of probabilities that while the tenant incurred a cost for these items in association with dealing with the infestation within her unit, in the absence of receipts I find the tenant has established limited entitlement of \$21.00, which is half the amount claimed.

\$15.00: black ink cartridge. Section 72 of the Act, as above, addresses **Director's orders: fees and monetary orders**. For the same reasons set out above, this aspect of the tenant's application is dismissed.

\$292.50: total costs associated with "laundry disinfection." Breach letter #1 which is dated February 10, 2010, makes reference to the tenant's "enormous amount of laundry to disinfect." I find on a balance of probabilities that the tenant incurred a considerable cost arising from laundering items in her unit. In view of what is an estimate, and in the absence of a methodical log kept of loads for the washer and dryer, I find that the tenant has established a limited entitlement to \$146.25 which is half the amount claimed.

\$50.00: filing fee. As the tenant has achieved some success in her application, but at the same time, successfully negotiated a settlement with the landlords concerning an end to tenancy, I find the tenant has established entitlement to recovery of \$25.00, which is half the amount claimed.

Total amount of tenant's entitlement: **\$192.25** (\$21.00 + \$146.25 + \$25.00).

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Offsetting the above claims against each other, I find that the landlords have established a net entitlement to \$3,846.43 (\$4,038.68 - \$192.25).

I order that the landlords retain the security deposit of \$380.00 plus interest of \$3.33, (total: \$383.33) and I grant the landlords a monetary order under section 67 of the Act for the balance owed of \$3,463.10 (\$3,846.43 - \$383.33).

### **Conclusion**

Pursuant to the agreement reached between the parties, I hereby issue an **order of possession** in favour of the landlords effective not later than **1:00 p.m., Friday, April 30, 2010**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Following from the above, I hereby order the landlords to retain the tenant's full security deposit plus interest in the combined amount of \$383.33.

Further to the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlords in the amount of \$3,463.10. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 19, 2010

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Dispute Resolution Officer