

DECISION

Dispute Codes:

MNDC, OLC, RP, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for compensation for damage or loss under the Act, an Order that the landlord comply with the Act, make repairs to the rental unit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act?

Must the landlord be Ordered to comply with the Act?

Must the landlord be Ordered to make repairs to the rental unit?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on April 1, 2010. Rent is \$450.00 per month and a deposit in the sum of \$225.00 was paid. The tenant rents a room in a home with 5 other occupants, who all share a common kitchen and bathroom facilities.

The tenant is claiming compensation in the sum of \$700.00 due to the lack of a screen on a window, due to the unclean state of the rental unit at the time he moved in and as the result of a failure of the landlord to inform him prior to moving in, that the unit had a known bed bug problem.

The tenant supplied photographs taken the day prior to submission of his Application on May 31, 2010, which show the presence of bed bugs and the need for cleaning in the common areas of the rental property, plus the tenant's open bedroom window. The window is sealed in the open position and it does not have a screen.

When the tenant moved in he found the rental unit was in an unclean state. Of the 6 people living in the home, 5 of those were not living in the unit prior to April 1, 2010. The landlord has failed to ensure that the common areas were cleaned for the tenants at the start of the tenancy.

The landlord stated he has provided the tenants with any cleaning products that they need and that he believes the tenants, who are all adults, should be keeping the common areas clean. The photographs submitted as evidence show a bathroom fan covered in dirt, a severely stained shower stall, a dirty stove and an oven that is black inside and walls and cupboards that are unreasonably dirty.

Within several weeks of the tenancy start the tenant discovered that the rental unit had bed bugs. On May 11, 2010, the tenant had a conversation with the landlord requesting treatment. The tenant was critical of the landlord as he had been aware of the bed bug problem and not told the tenant prior to his accepting the tenancy.

On May 20, 2010, the tenant gave the landlord a note, as treatment by the pest control company had not eliminated the bed bugs. The tenant requested action by the landlord as he had been dealing with the bug problem for twenty days.

The landlord provided testimony that pest control treatment occurred the month prior to the tenant moving in; when all but one of the tenants had moved out. The house was emptied and treatment occurred. Since then the house was treated on April 12, 2010 and May 19, 2010. Tenants had been given treatment preparation instructions which require the tenants to put all of their belongings in the dryer, to then bag their belongings and to prepare their rooms. The landlord submitted that some of the tenants cannot afford to place their clothes in the on-site coin-operated dryer, so they are not able to fully comply with the preparation instructions.

The landlord is following the recommendations of the pest control company, that treatment should take place on a monthly basis and will cease once bugs are no longer found in the traps placed around the home.

The tenant submitted that the other occupants do not properly prepare for treatment, which renders the treatment less effective. Sticky traps left in the rental unit have caught bugs within hours of treatment occurring.

The landlord wished to call a witness from the pest control company, but this witness was not available; the Telus operator was unable to reach him.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

During the hearing the tenant acknowledged that he had not previously talked with the landlord about his bedroom window. The landlord agreed that he will attend at the rental unit, repair the window so that it can open and close and then investigate a method of screening the window and installing a screen.

Pursuant to section 32 of the Act, the common areas must be maintained in a state that complies with health, safety and housing standards, required by law. There is no evidence before me that the landlord has breached any laws; however, it is evident that the common areas are not reasonably clean.

During the hearing the landlord agreed that he would attend at the rental unit during the next several weeks and that by July 31, 2010, the common areas of the rental unit will be cleaned. I note that the tenant did view the rental unit common areas prior to moving in and accepted the tenancy after viewing the common areas.

In relation to the tenant's claim for compensation due to the failure of the landlord to disclose the presence of bed bugs prior to the start of the tenancy; I find that the landlord had taken steps to eradicate the bugs and that he was not bound under the Act to disclose that treatment had previously occurred. However, the home has not been treated since May and, if bugs continue to be present, the landlord has a responsibility to mitigate by continuing with an eradication program.

Any failure of the landlord to continue to treat, as recommended by a pest control company, could result in a failure to meet the requirements of section 32 of the Act. The cleaning that the landlord is to undertake may assist in making the treatments more effective.

During the hearing I explained that the landlord must ensure that all occupants properly prepare for treatments; as a failure to do so could result in the treatment failing and a loss of enjoyment of the rental unit by other occupants. Prior to each treatment a notice should be posted and each tenant be given a copy of the preparation requirements. As the landlord acknowledged that some occupants do not prepare properly, I find that the tenant has a right to expect that the landlord will now ensure proper pest preparation occurs.

As I have found that the landlord did not know about the problem with the window prior to this hearing, that the landlord had no responsibility to discuss pest treatments that

occurred prior to the tenancy and, that the tenant would have viewed the common areas prior to renting his room, I find that the tenant's claim for compensation is dismissed.

I find, based on the on-going presence of pests in the home that the tenant may deduct the \$50.00 filing fee from the next month's rent owed.

Conclusion

The tenant's monetary claim for compensation is dismissed.

I find that the tenant is entitled to filing fee costs which may be deducted from the next month's rent owed in the sum of \$50.00.

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: July 19, 2010.

Dispute Resolution Officer