

## **DECISION**

**Dispute Codes:** MNDC and OLC

### **Introduction**

This application was brought by the tenant seeking Monetary Order in the amount of \$24,761.74 for losses, damages and costs incurred when he left the subject tenancy due to a bedbug infestation.

This matter was originally set for hearing on May 17, 2010 but was adjourned to the present sitting on the request of the tenant's newly assigned advocate to permit him time to study the respondent landlord's evidence submission.

### **Issues to be Decided**

This application requires a decision on whether the tenant is entitled to a Monetary Order taking into account whether the losses are proven, whether they are attributable to landlord's breach of duty and whether the amounts claimed are proven and/or reasonable.

### **Background and Evidence**

This tenancy began on September 1, 2004 and ended on March 31, 2008. Rent was \$700 per month and the landlord held a security deposit of \$350. The parties concurred that the tenant had rent-free access to the home for eight days before September 1, 2004 during which time he did painting and cleaning.

During the hearing, the tenant gave evidence that he was forced to end the tenancy due to a severe bedbug infestation he discovered in September 2007. He stated that he had advised the landlord in early October 2007 but she assumed no responsibility for the problem. The landlord stated that initially, the tenant accepted responsibility for treatments, but became hostile toward her later in October. With government assistance, the tenant engaged a pest control company which subsequently had to deliver more than the customary three treatments.

The tenant obtained some publicity over the situation, and was subsequently contacted by a tenant who had resided in the rental unit from November of 1998 to October of 1999. She gave evidence that during her stay at the rental unit, she experienced substantial insect infestation. She stated that she had three children and that 14 others had come and gone throughout the tenancy as she had operated a "safe house."

She stated that the infestation had so agitated her son who suffers bi-polar disorder that he had broken a number of holes in the walls and uncovered insects therein.

She was subsequently evicted.

The landlord submitted a letter, received April 26, 2010, from a tenant who had lived in the rental unit for two years prior to the applicant's tenancy. He stated that he had experience no problems with bed bugs during his two year tenancy and that he had no difficulty discussing maintenance with the landlord and that the home was maintained in satisfactory condition.

The tenant submitted into evidence a piece of wood trim that he had taken from the rental unit that he stated had bed bugs painted into from his initial work in 2004 to illustrate his belief that the infestation had been ongoing.

He also submitted a transcript of an interview he did with the pest control worker who advised him, among other things, that bedbugs can lie dormant for 20 months.

In addition, the tenant submitted evidence from medical doctors verifying that he suffered from serious skin irritation. The landlord noted that skin itching can result from medication taken by the tenant. There were also letters from neighbours confirming that the applicant had been a good tenant and neighbour.

## **Analysis**

The tenant submits that the landlord breached the duty of care that she owed under section 32 of the *Act* to maintain the rental unit in a state of repair that meets the health, safety and housing standards required by law. Section 32 imposes a similar duty on tenants with respect to any damage they or their guests may have caused as well as a duty to maintain reasonable health, cleanliness and sanitary standards.

The presence of bedbugs does not in any way reflect on the cleanliness of the persons suffering them. These insects can jump to an article of clothing or bag and unknowingly be carried home by anyone, or travel by any number of other means.

For example, the landlord notes that the tenant put used carpeting in the rental unit, although the tenant states it had only been used for one day by an acquaintance who had a change of heart.

The tenant is of the firm view that the infestation had been ongoing since 1999 and offers the information that many people will not be bothered by bedbugs for some period of time.

In considering the evidence given by the tenant's witness, I must take into account that her experience pre-dates the tenant's complaint by seven or eight years, and, that the credibility of her testimony has to be weighed against circumstances surrounding the end of her own tenancy.

I must further consider the testimony of immediately preceding tenant's two years in the rental unit without encountering bedbugs added to the applicant tenant's three full years of not recognizing bedbugs and find that the rental unit was occupied for at least a full five years without any tenant discovering bedbugs.

While the tenant has submitted a sample of wood trim that he states shows painted over bedbugs, I cannot tell if the spots in question are that or simply painted over dirt.

Therefore, I find that it was logical and reasonable for the landlord to conclude that the infestation was contemporary to the tenancy and that the tenant has not proven the rental unit was infested with bedbugs from the beginning of the subject tenancy.

I cannot find that the landlord is responsible for compensating the tenant for his consequent losses and damages.

### **Conclusion**

This application is dismissed without leave to reapply.

July 6, 2010