



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC

OLC

RP

RR

FF

Introduction

- 1) This hearing dealt with an Application for Dispute Resolution by the tenant seeking the following::
 - A Monetary Order or rent abatement in 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 allowing a Tenant to reduce rent for repairs, services or facilities agreed upon but not provided;
 - Reimbursement by the Landlord for the cost of the filing fee paid by the Tenant for this application;

Issue(s) to be Decided

- Has the tenant submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act.

- Is the tenant is entitled to a rent reduction under section 65(1) of the *Act* due to a loss of value of the tenancy?
- Whether the Landlord is in noncompliance with the Act and should be ordered to comply with the Act.
- Whether to landlord should be ordered to do repairs.

Background and Evidence

The tenancy began in November 2006 with rent of \$296.00 plus \$23.00 cable each month. The Tenant submitted numerous documents into evidence some of which were not material to the dispute. Relevant evidence included a copy of the tenancy agreement, copies of communications between the parties, written statements and photographs. Also submitted were copies of invoices from the pest control contractor along with treatment and inspection reports for services rendered including March 16, 2010, March 24, 2010, April 13, 2010, April 23, 2010, June 1, 2010 and August 1, 2010.

The tenant testified that her suite has been infested with bedbugs despite repeated treatments by the landlord's contractor. The tenant testified that the treatments have not worked and she has been bitten repeatedly by bedbugs, fleas and other insects in the unit and cannot function under these conditions. The tenant acknowledged that the landlord had engaged the pest control experts to treat the unit several times after she complained, even though the reports from the contractor found no evidence of infestation. The tenant stated that she is not able to use her bed and sofa bed because of the contamination. The tenant testified that the landlord has failed to comply with the Act by not maintaining residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, which the Residential Tenancy Act requires and she seeks compensation or a rent reduction for the loss of use and replacement costs totalling \$1,068.00, as well as an order to force the landlord to comply with the Act and complete repairs.

The tenant's witness supported the tenant's testimony and testified that sometimes they have been bitten by flying insects that are often too small to see.

The landlord testified that it has responded promptly to the tenant's complaints and has done everything possible to ensure that there was no residual infestation, even ordering and paying for additional treatments when they were deemed unnecessary by the professional contractor. The landlord testified that it had removed the carpeting and installed flooring in the unit to give the tenant some peace of mind and make it easier to keep clean. According to the landlord, nothing that the landlord tried was ever effective in convincing the tenant that the problem had been eradicated despite proof provided.

Analysis

In regards to an Applicant's right to claim damages from 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 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.

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, makes 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 tenant has not succeeded in proving that there was any violation of the Act by the landlord and therefore the claim fails to meet element 2 of the test for damages or compensation against the landlord. I find that the landlord did take appropriate action in regards to the complaints, and in fact went beyond the expectations of the Act by removing the carpeting and re-treating the unit for bedbugs, even though reports from the experts had confirmed that the unit was bed-bug free. Given the above, I find that the portion of tenant's application requesting compensation must be dismissed.

In regards to the tenant's request that the landlord be ordered to follow the Act, I hereby order the landlord to follow the recommendations of the pest-control contractor without deviation in future and give the tenant a copy of the reports that relate to her unit. Should the tenant remain dissatisfied with the inspection reports or decisions rendered by the landlord's pest-control contractor, the tenant is at liberty to make her own

arrangements to have another certified pest-control company inspect the unit at her own expense. Should this company that has been contacted by the tenant find evidence of bed-bugs or other insect infestations, the tenant will be entitled to have the unit re-treated at the landlord's expense, once the written report from the tenant's contractor has been given to the landlord.

The remainder of the tenant's application is dismissed without leave.

Conclusion

Given the testimony and evidence of the parties 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 any violation of the Act or Regulation.

The tenant may, on her own initiative and at her own expense, engage a pest control expert to conduct an inspection for bedbugs at any time and issue a report. If it is found that bedbugs have re-infested the unit, and upon receiving the written report confirming this, the landlord is ordered to have the unit re-treated for bedbugs.

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

August 2010

Date of Decision

Dispute Resolution Officer