



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, ERP, RP, MNDC, FF

Introduction

This hearing dealt with the tenant's application for an Order for the landlord to comply with the Act, regulations or tenancy agreement; to make emergency repairs and repairs; for compensation for damage or loss under the Act, regulations or tenancy agreement; and, for recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party. Both parties confirmed service of documents upon them.

Issues(s) to be Decided

1. Is it necessary to issue Orders to the landlord for compliance, repairs or emergency repairs?
2. Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

I heard undisputed evidence as follows. The tenant and his family have been residing in the rental unit for approximately nine years. Starting in the winter of 2009 a mouse infestation occurred in the building. In January 2010 eight mice were caught in the rental unit and a pest control company attended the unit on numerous occasions. Several mouse traps were left in the rental unit and the mice continued to be a problem until the landlord changed pest control companies a couple of months ago. Since the new company took over the pest control contract the mice have diminished.

I also heard that the tenant had been paying rent of \$830.00 and on March 30, 2010 the landlord issued a Notice of Rent Increase to raise the rent to \$855.00 effective July 1, 2010. The tenant conveyed that he was shocked to receive a rent increase when there was a mouse problem and on June 11, 2010 filed an Application for Dispute Resolution.

With this application the tenant is seeking compensation for \$4,000.00. The tenant explained that the number of mice caused his wife a great amount of stress and anxiety. As well, his younger son slept with the tenant and his wife, the tenant's other son and daughter slept elsewhere for a few nights due to the mouse infestation. The tenant testified the mice problem first became apparent December 29, 2009 and the tenant or his wife reported the problem to the former building manager. Further, the tenant was displeased with the inspections performed by the former pest control company and claims to have informed the building manager of unsatisfactory performance by the pest control company. Specifically, the tenant recalled how a mouse had been caught in a trap under the bed but when the technician came to inspect the unit the technician did not check every room and left the mouse in the trap.

The landlord testified that regular monthly pest control has been performed at the property and that in the winter of 2009 the mouse population increased due to another tenant feeding squirrels and birds at the property. The landlord submitted that upon receiving complaints of a mouse infestation the pest control company was engaged to attend the property to deal with the infestation and the tenant who was feeding the squirrels and birds was given warnings to cease such activity. Further, when the tenant advised the manager that the pest control company's efforts were inadequate the building manager would call the pest control company.

The landlord acknowledged that in December 2009 there was a former building manager at the property and the current manager took over duties in early January 2010. The landlord submitted invoices for pest control starting for January 13, 2010 through April 13, 2010 but claimed there were likely invoices preceding January 13,

2010. The landlord claimed there was difficulty dealing with the mouse infestation due to the amount of possessions in the rental unit. The former pest control company's technician also noted an excessive amount of clutter on the tenant's balcony. Upon enquiry, the landlord suggested the new pest control company got better results than the former company due to a change in bait.

Upon review of the pest control invoices I noted that the technician made notes about food being left accessible to mice in the rental unit. The building manager and the tenant both agreed the technician had made verbal comments about putting food in plastic or the fridge. The tenant submitted that they complied with the technicians suggestions by keeping their bread in the fridge.

Analysis

Under section 32 of the Act, a landlord must repair and maintain a rental unit so that it complies with health, safety, and building standards required by law and is suitable for occupation by a tenant given the age, character and location of the rental unit. A tenant is also responsible for maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property to which the tenant has access.

Under section 28 of the Act, a tenant is also entitled to quiet enjoyment of the unit which includes freedom from unreasonable disturbance.

It is important to note that pest infestations may occur from time to time, as do other major repair issues; however, such events do not automatically entitle a tenant to compensation. Rather, the tenant must demonstrate that the landlord was aware of the problem and was negligent in dealing with the problem which caused the tenant to suffer a loss of use of the rental unit or loss of quiet enjoyment of the unit. Negligence may include inadequate or an unreasonably delayed response to a known problem.

I am satisfied a mouse infestation arose in the building due to no fault of the tenant and that it was upon the landlord to employ sufficient pest control action once an infestation was apparent. Upon hearing from the tenant I am satisfied that on December 29, 2009 a mouse problem was reported to the former property manager. From the landlord's documentary evidence I am satisfied the pest control company attended the property on January 13, 2010 to address a mouse infestation. I was not provided sufficient evidence the pest control company attended before January 13, 2010 to deal with the infestation. I find the time between December 29, 2009 and January 13, 2010 is unreasonably lengthy and likely permitted the problem to worsen.

Upon review of the pest control invoices, I find there is record of a mouse being caught in the rental unit March 9, 2010 but nothing after that date. Invoices for April 2010 indicate little signs of mouse activity in the building. The technician also noted that cereal boxes had to be stored in plastic containers and clutter on the balcony had to be cleaned up. However, I have little evidence this was conveyed to the tenant or that the tenant complies with such suggestions.

Based on the above, I am satisfied there was a mouse infestation between December 29, 2010 and March 9, 2010 and then the infestation largely subsided. I find the tenant made this application after the mouse infestation was largely resolved. I find the mouse infestation was at its worst in January 2010 and that it is reasonable to expect that a tenant significantly disturbed by a mouse infestation would have made an Application for Dispute Resolution sooner than June 2010. Therefore, I find it likely that the tenant filed this Application for Dispute Resolution in response to receiving the Notice of Rent Increase.

I find the tenant failed to demonstrate damages or losses in the amount of \$4,000.00. While I find a mouse infestation likely devalued the tenant's quiet enjoyment of the unit, I find the request for \$4,000.00 to be excessive for a mouse infestation that lasted a few months.

Despite the tenant's delayed request for compensation, I do find the landlord could have taken quicker action to remedy the mouse infestation. Further, I find the landlord's decision to have a contract for pest control may not have yielded optimum results in dealing with an infestation.

In light of the above considerations, I award the tenant the \$300.00 which I calculate as the equivalent of the annual rent increase ($\$855.00 - \$830.00 * 12 \text{ months}$). The tenant further authorized to recover the filing fee paid for this application. For clarity, the monthly rent remains at \$855.00; however, **the tenant is authorized to make a one-time deduction of \$350.00 from a subsequent month's rent in satisfaction of these awards.**

As I was provided evidence the mouse infestation has diminished and the landlord has employed a new pest control company with better results, I am satisfied the landlord is currently complying with its obligations to repair and maintain the property and I do not issue any Orders to the landlord. However, the landlord is cautioned that it is the landlord's continued obligation to provide living accommodation that meets the standards required under sections 28 and 32 of the Act. Thus, regular pest control service and monitoring are expected of the landlord.

Conclusion

The tenant is authorized to deduct \$350.00 from a subsequent month's rent in satisfaction of this application. I make no Orders to the landlord for compliance or repairs. Rather, the landlord is expected to continue monitoring and employing regular pest control service.

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: August 17, 2010.

Dispute Resolution Officer