



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application for a monetary Order for money owed or compensation for damage or loss. In the Application for Dispute Resolution the Tenants declared that they are also seeking an Order restricting the Landlord from imposing rent increases for a "few years".

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord should be restricted from imposing future rent increases and whether the Tenant is entitled to compensation for problems with a carpet beetle infestation and/or a problem with the bathroom fan, pursuant to section 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2007 and that the Tenant is currently paying monthly rent of \$787.00. The Tenant stated that his rent has been periodically increased during this tenancy in accordance and that he has no reason to believe that the rent increases do not comply with the *Act*. The Tenant has requested that the Landlord be restricted from imposing further rent increases for a period of time due to problems with the rental unit.

The Tenants are seeking compensation, in the amount of \$400.00, in part because they were displaced from their rental unit for a period of time as a result of a carpet beetle infestation and in part because they believe their bathroom vent is malfunctioning.

The Tenant stated that in January of 2009 they found carpet beetles in their rental unit; they believe the carpet beetles are coming from their cupboard; that the Landlord fumigated the rental unit in April of 2009; that the bedbugs returned shortly after the unit was fumigated; that the Landlord fumigated the rental unit again in February of 2010; that the problem is now resolved; and that they had to vacate the rental unit for seven days after the first fumigation and eight days after the second fumigation because his mother suffers from allergies and was sensitive to the chemicals used by the pest control company.

The Tenant stated that he believes the infestation was the result of old kitchen cupboards however he submitted no evidence to corroborate this suspicion and he submitted no evidence to establish that the carpet beetle infestation was related to the neglect or actions of the Landlord.

The Building Manager and the Area Manager both stated that there have been no reports of carpet beetles from other occupants of the residential complex. The Building Manager argues that it is likely that the Tenants are responsible for the carpet beetle infestation in their rental unit, given that the problem is isolated to their rental unit.

The Building Manager stated that new carpets and drapes were installed in the rental unit prior to the beginning of this tenancy; that the counters in the kitchen and bathroom have been replaced; that the face of the kitchen cabinets have been repainted; and that the Landlord has no plans to replace the kitchen cabinets themselves, although the Tenants want them replaced.

The Tenant stated that when they use the fan in their bathroom they can smell odours from other rental units in the complex. He stated that he reported this problem to the Landlord on two occasions but nothing has been done.

The Building Manager stated that he investigated the Tenants concerns regarding the bathroom fan on two occasions and he could not detect a problem with the fan on either occasion.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that requires them to currently pay monthly rent of \$787.00.

Section 43 of the *Act* authorizes landlords to impose an annual rent increase up to an amount that is calculated in accordance with the *Act*. The *Act* does not authorize me to restrict a landlord's right to impose a rent increase in accordance with section 43 of the *Act*. The *Act* does authorize me to award financial compensation to a tenant in compensation for deficiencies with a rental unit and I find that this is the more appropriate method of compensation. On this basis, I decline to limit the Landlord's right to impose future rent increases.

Section 32(1) of the *Act* stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with 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.

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proving that the Landlord failed to comply with section 32(1) of the *Act* rests with the Tenant and I find that the Tenant has submitted insufficient evidence to show that the Landlord has failed to comply with this section of the *Act*.

Firstly, I find that the Tenant has failed to establish that the infestation of carpet beetles was the fault of the Landlord. In reaching this conclusion I was heavily influenced by the testimony of two agents for the Landlord, who both declared that there have been no reports of carpet beetle infestations elsewhere in the residential complex and by the absence of evidence that refutes this statement, which causes me to conclude that it is entirely possible that the infestation is isolated to the Tenant's rental unit and may, therefore, have originated with the Tenants. In determining that the infestation may have originated with the Tenants, I took note of the fact that the Tenants had resided in the rental unit for approximately 1.5 years before the infestation was detected.

I was further influenced by the absence of any evidence regarding the etiology of carpet beetle infestations which would cause me to conclude that the Landlord contributed to the infestation. I specifically note that the Tenant submitted no evidence to corroborate his suspicion that the age of the kitchen cabinets is relevant to the infestation. I note that the Landlord has made many upgrades to this rental unit, including new counter tops, new carpets, new drapes, and that the cupboards have been painted, all of which causes me to conclude that the Landlord has diligently maintained the rental unit.

I note that the Landlord fumigated the rental unit on two occasions. I find that the Landlord acted diligently and responsibly in fumigating this unit to ensure that the infestation did not spread to other areas of the residential complex.

Secondly, I find that the Tenants failed to establish that there is a problem with the bathroom fan. In circumstances where one party contends there is a problem and the other party contends there is not a problem, the party seeking compensation bears the burden of proving the problem exists. In these circumstances the Tenants have submitted no evidence to corroborate the Tenant's testimony that there is a problem with the fan, and I find that they have failed to support their claim.

Conclusion

Section 67 of the *Act* authorizes me to order one party to pay compensation to another party if a party suffers damage or loss as a result of the other party not complying with the *Act*. As the Tenants have not established that the Landlord failed to comply with the

Act, I find that the Tenants are not entitled to compensation in any amount. I therefore dismiss the Tenants' claim for compensation in the amount of \$400.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 13, 2010.

Dispute Resolution Officer