

DECISION

Dispute Codes MNDC, FF

Introduction

This face-to-face hearing was conducted on the basis of applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the *Act*). Both parties applied for monetary Orders for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67. The landlord also applied for recovery of the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to call witnesses and to make submissions. Both parties confirmed having received each other's applications for dispute resolution by registered mail. I am satisfied that both applications were served in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary Order to compensate him for one-half month's rent and for items that he lost while the landlord took action to treat his rental premises for bedbugs? Is the landlord entitled to a monetary Order for costs incurred to replace items rendered unusable through the tenant's failure to keep his rental premises in a neat and sanitary condition? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on May 1, 2005. At the present time, the tenant is paying \$446.00 in rent each month. The landlord continues to hold the tenant's \$250.00 security deposit plus interest paid on May 1, 2005.

The landlord entered into evidence two warning notices issued to the tenant in 2007 and 2008 requesting that he maintain his rental premises in a healthy and sanitary condition in accordance with his residential tenancy agreement.

In March 2010, the landlord posted notices in this building that there was an outbreak of bedbugs in this multi-storey building and that tenants should report any sightings to the landlord as the landlord was making plans to treat this situation. The landlord submitted undisputed written evidence that the tenant told the landlord's representative at that time that there had been bedbugs in his suite for two years and that he was no longer able to sleep in his bedroom because of them. The tenant testified that he did not tell the landlord about this problem until then because he was trying to deal with this situation by "steaming them."

The landlord entered undisputed written evidence that the pest control company advised the landlord that the tenant's suite was the worst bedbug infestation that the attending staff had ever seen. The landlord had to treat the tenant's suite and six other suites in this building. The landlord testified that the pest control company identified the tenant's suite as the origin of the bedbug problem in this building. The tenant challenged this determination, maintaining that the problem may have originated in another suite. The tenant had to vacate the premises for an extended period commencing on April 12, 2010 while the pest control work was being undertaken. He stayed with family until May 13, 2010 when he underwent scheduled surgery. He returned to the rental unit on June 4, 2010 after discharge from the hospital.

The landlord testified that \$34,263.28 was spent by the landlord to address this problem. The landlord attributed this expense to the tenant's failure to heed the warning notices to keep his premises in a sanitary condition. The landlord applied to recover \$5,768.56 of the landlord's \$12,000.00 costs of replacing items in the tenant's rental unit. The landlord asked for a monetary Order to recover the following items that needed to be replaced in the tenant's rental unit.

Item	Amount
Appliances (Fridge and Stove)	\$1,190.88
Flooring	3,077.68
Labour	1,500.00
Total Monetary Award Requested	\$5,768.56

The landlord also noted that an additional \$12,039.20 was spent to treat the bedbug problem in the tenant's rental unit.

The tenant applied for a monetary Order for \$4,229.64 to replace the following items that were discarded by the landlord or the landlord's agent when the tenant was required to leave the rental premises for pest control treatment.

Item	Amount
Computer	\$1,284.64
30 inch Sony TV	700.00
DVD Player	75.00
VCR Player	75.00
Console to Hold TV/DVD & VCR	100.00
21 inch TV	100.00
Computer Table	100.00
Kitchen Table and Chairs	100.00
4 lamps	200.00
Microwave	60.00
Toaster Oven	35.00
Griller	25.00
2 patio chairs & small table	60.00
Large Clay Planter	50.00
Air Cleaner	70.00
Freezer Meat	325.00
Encyclopaedia Britannica	500.00
Canned goods, pasta, spices, etc	150.00
Total Monetary Award Requested for these Items	\$4,009.64

The parties agreed that the landlord did not charge the tenant rent for April or from May 1, 2010 until May 14, 2010. The tenant lived elsewhere for most, if not all of this period. The tenant also requested a monetary award for the \$220.00 he paid in rent from May 15, 2010 until June 1, 2010 to compensate him for the disruption he experienced in having to vacate his rental unit and the lack of certainty that the landlord provided in estimating when he could return to his rental premises.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Landlord's Application for Monetary Order

I accept the landlord's assertion that the tenant was negligent in taking care of his rental unit, despite the landlord's written notices to keep his premises in healthy and sanitary condition. Although there is no certainty that the bedbug infestation originated in the tenant's rental unit, it would seem likely that this occurred given the tenant's failure to notify the landlord of the infestation of his rental unit with bedbugs for a two year period.

I accept that the tenant is responsible for a portion of the landlord's costs of replacing the items listed above. However, the landlord is not entitled to recover costs from the tenant that would be part of the normal replacement of items as the building ages.

The landlord estimated that the appliances replaced, the tenant's fridge and stove, were 10-15 years old and were in good working order when the tenant commenced his tenancy. Residential Tenancy Policy Guideline #37 establishes that the typical life span of a fridge and stove is 15 years. By picking the mid-point of the landlord's estimate for the age of the fridge and stove (12.5 years), I allow the landlord a monetary award of the remaining 2.5 years of the 15 year replacement cycle for the fridge and stove. This results in a monetary award of \$198.52 ($2.5/15$ or 16.67% of the landlord's \$1,190.88 cost) to replace these appliances.

Residential Tenancy Policy Guideline #37 establishes that the typical life span for carpeting is 10 years. The landlord said that the carpet was new when the tenant commenced his occupancy in May 2005. The previous carpeting was at least 5 years old when the tenant occupied this unit, so the landlord could only potentially recover 50% of the cost of replacing this flooring. The tenant testified that the carpet was not new when he occupied this rental unit. The landlord did not provide a move-in condition inspection report nor receipts for the replacement of the carpet prior to the tenant's commencement of occupancy of this rental unit. I accept the tenant's claim that the carpets were not new when he moved into this unit. In the absence of other evidence, I allow the landlord 25% of the cost of replacing the carpeting in this unit (plus labour.) I find that the landlord is entitled to a monetary award of \$1,144.42 (i.e., 25 % x (\$3,077.68 + \$1,500.00) = \$1,144.42) to recover 25% of the cost of the landlord's replacement of the carpeting and associated costs of repair.

Tenant's Application for a Monetary Order

There is no dispute that the tenant's belongings were discarded during the pest control company's treatment of his rental premises and the landlord's renovations to make the rental unit habitable once more. While the tenant bears some responsibility for failing to notify the landlord that his unit was infested with bedbugs for two years, the landlord also bears responsibility for ensuring that only those goods that cannot be treated or salvaged were discarded. The landlord sent the tenant an April 9, 2010 letter outlining the following requirements regarding the de-infestation of the tenant's suite.

...you must agree to undertake the following:

- 1. Vacate your suite for 3 consecutive days in the week starting Monday 12 April.*
- 2. Have our pest control contractor bag and seal all your possessions currently in the suite and deposit them in external storage.*
- 3. Not to return any of your bagged possessions to our building unless they have been professionally laundered.*

The tenant signed that he had read, understood and agreed to these 3 undertakings.

While the tenant signed this undertaking, it is unclear whether the landlord was expecting the tenant to deposit the sealed possessions in external storage himself or if this responsibility was the landlord's or the landlord's contractor, the pest control company. If the tenant was required to vacate the suite, it would seem that responsibility for relocating of the bagged material was left to the landlord and/or the landlord's contractor. The tenant provided undisputed testimony that the landlord and/or the landlord's contractor disposed of the items listed in his application for reimbursement. He said that he spoke with the landlord's representative who agreed to look after removing these bagged items on his balcony. The tenant provided undisputed testimony regarding his conversation with the pest control company's staff member who advised him that he would not need to remove items such as his televisions, computer, DVD player, VCR, etc.,

In considering the tenant's application for reimbursement of the items discarded by the landlord and/or the landlord's contractor, I find neither party blameless. Although the tenant was negligent in caring for his rental premises, the landlord bears some responsibility in ensuring that the arrangements for bagging and removing the tenant's belongings were clear. In addition, the landlord bears responsibility for ensuring that only those items that could not be salvaged through cleaning and spraying were discarded. The landlord provided insufficient evidence to demonstrate that the landlord received professional advice that all of the tenant's possessions were unsalvageable. I find that the landlord did not exhibit a proper duty of care for the tenant's belongings. In considering an appropriate amount for a monetary award for the items listed by the tenant, I note that receipts were not provided by the tenant for many of these items. Although the replacement costs seem appropriate for the most part, the tenant provided little evidence that he had all of the items he listed in his possession in the rental premises. Having regard to all of these circumstances, I make a monetary award in the tenant's favour in the amount of \$2,000.00 for the items lost during the pest control spraying and renovations to his rental unit.

I dismiss the tenant's application to recover \$220.00 in rent paid from May 15, 2010 until May 31, 2010 as I find that the landlord made appropriate rental reductions for the six-week period prior to that when his rental premises were for the most part unavailable to him. I also note that the tenant testified that he was hospitalized from May 13, 2010 until he returned to the rental premises on June 4, 2010. During this period he did not incur extra accommodation costs.

As I accept portions of both of the parties' claims, I deny the landlord's application for recovery of the filing fee for the landlord's application.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms:

Item	Amount
Tenant's Application for Items Discarded during spraying and renovations	\$2,000.00
Landlord's Replacement of Carpeting	-1,144.42
Landlord's Replacement of Fridge and Stove	-198.52
Total Monetary Order	\$657.06

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. 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*.