



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes:

MNR, MNDC, FF

Introduction

This is the Tenant's application for a monetary order for the cost of emergency repairs,; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

This Hearing began on November 3, 2010, and was adjourned to December 3, 2010, for want of time.

The Tenant served the Landlord with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Each party provided the other with copies of their evidence packages.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues to be Decided

- Is the Tenant entitled to compensation from the Landlord as a result of failed treatments against bed bugs?

Background and Evidence

This tenancy began on March 1, 2005. The Tenant and his family moved out of the rental unit on December 28, 2009, and paid rent to the Landlord until January 31, 2010.

Monthly rent at the end of the tenancy was \$1,003.00. The Landlord provided the Tenant with the full amount of his security deposit at the end of the tenancy.

In August, 2009, the Landlord discovered bedbugs in the rental property. On August 19, 2009, the Landlord gave the Tenant notice that they would be providing preventive treatment for bedbugs in the rental unit.

Following the initial treatment, the Landlord provided additional treatments, as follows:

- September 2, 2009 (follow-up, preventive)
- October 15, 2009
- November 3, 2009
- November 18, 2009

The Tenant hired a pest control company, who treated the rental unit on December 4, 2009. A follow-up treatment was provided by the same company on December 18, 2009.

On January 4, 2010, a canine inspection company hired by the Landlord inspected the rental unit and other suites in the rental property. The dogs found active bed bug infestations in 6 suites in the rental property, including the rental unit.

The Tenant gave the following testimony:

The Tenant testified that the Landlord used two different pest control companies to treat the rental unit. The pest control company (PCC1) that initially performed the bedbug treatments provided notices that did not comply with the *Integrated Pest Management Regulation*, because the notices did not:

- Provide the Tenant with 72 hours notice, as required;
- Provide the registration number and active ingredients in the chemicals being applied, as required;

- Provide a proposed date and an alternate date, as required; and
- Provide the name and phone number of the licensee, as required.

The Tenant stated that he was alarmed because he has an infant child and did not know what chemicals were being used. The Notice indicated that tenants had to be out of the rental unit for a minimum of 4 hours, and 8 hours if an infant lived in the unit. The Tenant asked the PCC1 what chemicals were being used and they replied that the information was proprietary to the Landlord. The Tenant asked the Landlord what chemicals were being used, and the Landlord declined to tell him.

The Tenant filed a complaint with the Ministry of Environment, who issued an Advisory Notice to PCC1.

In December, 2009, the Tenant discovered that PCC1 had ceased operations in September, 2009, and that the Notices he was receiving from PCC1 were from a defunct company. The Tenant received a notice that his home was going to be treated by a different pest control company (PCC2). The Tenant discovered that PCC1 and PCC2 were basically run by the same individuals, who had simply changed their name.

PCC1's Notices indicate that tenants must vacate their home "for a minimum of 4 hours" and in the event that there are children under the age of two "you will need to vacate for 8 hours". PCC2's Notices indicate that tenants must vacate their home "for a minimum of 4 – 6 hours" and in the event that there are children under the age of two "you will need to vacate for 8 - 12 hours".

Because the Tenant did not know what chemicals were being used, the Tenant sought medical advice about how long his infant child should be absent from the rental unit after a treatment. The Tenant's doctor provided him with a note indicating that the Tenants should not return to the rental unit for 24 hours after a treatment.

The Tenant began to research treatment for bedbugs and discovered that treatments should be done on all surrounding suites in order to contain the infestation.

Furthermore, five other pest control companies advised him that treatments normally take between 45 minutes to an hour, and that infants should not return to the treated area for 24 hours. The Tenant timed the Landlord's pest control company, and found that they took less than five minutes to treat his home. The Tenant lost faith in the effectiveness of the treatments and asked the Landlord to hire another pest control company. The Landlord declined, but offered the Tenant a credit of up to \$400.00 for a treatment from a pest control company of his choice. This offer was contingent on the Tenant keeping the offer confidential. The Tenant told the Landlord that he felt he had a duty to inform other tenants, who also had infant children, and the Landlord threatened him with eviction.

The Landlord told the Tenant that there was no treatment available for furniture, but the Tenant found a bug spray for bedbugs and treated his own furniture.

The Tenant hired a pest control company to treat his home, and to do a follow-up treatment. The Tenant stayed in a hotel overnight for the two treatments. The Tenant found the least expensive hotel he could, which was in the United States, at a total cost of \$156.02 for the two nights. A similar hotel in the area surrounding the rental unit would have cost about \$240.00 for two nights. The Tenant is not seeking travel costs from the Landlord.

The Tenant realized that his home was the only one to receive a thorough treatment, and therefore the bedbugs might return. The Tenant gave notice to the Landlord to end the tenancy.

The Tenant believes that some of the Landlord's documentary evidence has been altered. He questions the Landlord's evidence that other tenants were evicted for failing to comply with instructions for treatment.

The Tenant referred to news releases for two other buildings owned by the Landlord. The Landlord is known for the practice of renting out infected suites and it is normal business practice for the Landlord to use inferior pest control companies.

The Tenant seeks compensation, as follows:

Meals for family for seven days of treatments	\$290.31
Cost of covers for furniture, boxes, medication, vacuum bags	\$368.78
Hotel accommodations for two nights	\$156.02
Cost of treatments by Tenant's pest control company	\$384.30
4 months loss of quiet enjoyment (4 x \$800)	\$3,200.00
Recover rent paid for January/10, as Tenants moved out December/09	\$1,003.00
5 days lost holiday pay	\$1,169.25
Laundry expenses for preparing for 7 treatments	\$300.00
Cost of redirecting mail	\$42.00
Cost of photocopying and developing photographs for Hearing	\$35.00
TOTAL	\$6,948.66

The Landlord's agent gave the following testimony:

The Landlord first became aware of bedbugs in the rental property in August, 2009, when another tenant complained. The Landlord took immediate steps to ensure that the neighbouring suites were treated, as a preventive measure. The Landlord experienced difficulty with other tenants refusing to comply with the instructions set out by the pest control company for preparing their homes for treatment. The Landlord evicted two of the tenants in the building for failing to comply with the instructions.

On November 3, 2009, the Tenant advised the Landlord that there were no more bed bug bites on his family. On November 18, 2009, when the Tenant's suite was sprayed, the pest control company advised the Landlord that they believed there were active bedbugs in the Tenant's couch, where he had been sleeping. The pest control company advised the Landlord that BC law does not permit spraying furniture with chemicals where people sleep.

The Landlord gave the Tenant permission to hire his own pest control company to spray his unit only, but the Tenant declined because he wanted all of the units treated by the same company.

The Landlords did not treat the Tenant's home for bedbugs after November 18, 2009, because the Tenant refused to allow the Landlord's pest control company to treat his home on December 15, 2009. The Tenant gave his notice to end the tenancy on December 28, 2009.

The Landlord is always blamed when there are bedbugs present, but the Landlord did not cause the infestation and took reasonable steps to contain it. This is an expensive proposition for the Landlord because of the cost of mattress covers and the treatments themselves. The Tenant bought plastic storage bin, but that was unnecessary. Plastic garbage bags are sufficient and are less expensive.

The Landlord has hired a new pest control company and their instructions are that an infant should not return to the rental unit for 8 hours after treatment. The Landlord does not have an explanation for why PCC1 and PCC2 indicate different periods of time for tenants and infants to be absent from their homes after a treatment. The Landlord did not provide the Tenant with the name of the chemical(s) used to treat his home.

The Landlord does not believe it should be responsible for paying for hotel accommodation because the Tenants could have returned to the suite 8 hours after treatment. In any event, the Tenant and his family stayed in a hotel in United States and the Landlord should not have to pay for the Tenant's vacation.

The Tenant testified that he only prepped his suite once for the treatments and left his belongings in the plastic containers. Therefore, the Landlord does not believe they should pay for 5 days holiday time to the Tenant.

Bed bug infestations are not classified as an emergency under the Residential Tenancy Act.

With respect to the 72 hour notice rule, the Landlord sought shorter notice for the Tenant's benefit and the Tenant accepted the earlier notice and allowed access.

The Landlord has not misrepresented the facts or altered any evidence.

Analysis

Both parties provided extensive documentary evidence which was considered, along with the verbal testimony of the parties.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. In this case the Tenant bears the burden of proof.

To prove a loss and have one party pay for the loss requires the other party to prove four essential elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the testimony and documentary evidence provided by both parties, I find that the Tenant and his family were deprived of the use of part of the premises through no fault of their own. Although the Landlord did not intentionally cause the bedbug

infestation, I find that the Landlord is responsible for damages for breach of contract, as the Landlord did not provide the rental unit, as agreed to in the tenancy agreement.

The Tenant was not provided with the names of the chemicals used by the Landlord's pest control company and sought medical advice. The Tenant provided a copy of his doctor's note indicating that the Tenant's infant should not return to the rental unit for 24 hours after a treatment. Even if I did not accept this evidence, which I do, the Notices provided by the Landlord's pest control company indicate a minimum of 8 or 12 hours absence from the rental unit for infants, depending on which pest control company was used. The Notices provided by the Landlord do not indicate a set time, but state that the treatments will take place as follows:

Date of Notice	Date of Treatment	Between the hours of:	Time suite has to be vacant
August 14, 2009	August 19, 2009	10:00 a.m. – 2:00 p.m.	At least 4 hours after treatment
August 28, 2009	September 2, 2009	9:00 a.m. – 2:00 p.m.	At least 4 hours after treatment
October 13, 2009	October 15, 2009	1:00 p.m. – 3:00 p.m.	At least 4 hours after treatment
October 28, 2009	November 3, 2009	11:00 a.m. – 2:00 p.m.	At least 4 hours after treatment
November 13, 2009	November 18, 2009	12:00 p.m. – 2:00 p.m.	At least 4 hours after treatment

It is important to note that the Tenant has an infant child and therefore the suite would have to be vacant, according to the Landlord's pest control company's timelines, for a minimum of 8 or 12 hours. The time frames cover the lunch hour, and the vacancy time was past midnight on each occasion. Therefore, I allow the Tenant's claim for lunches and dinners, supported by copies of receipts, in the amount of \$267.92. I have not included the tips that the Tenant gave in calculating this amount.

The Tenant did not provide sufficient evidence that the Landlord's actions or neglect caused damage to the Tenant. Therefore his claim for recovering the cost of medications from the Landlord is dismissed.

I accept the Landlord's agent's testimony that plastic garbage bags would have been sufficient to contain the Tenant's belongings and dismiss the Tenant's claim for the cost of plastic storage bins. I allow the remainder of the Tenant's claim for the cost of preparing the rental unit for treatment, in the amount of \$61.93.

Based on the doctor's note entered in evidence, I accept that the Tenant was given medical instructions not to return to the rental unit for 24 hours after it had been treated against bed bugs. I accept the Tenant's testimony that accommodations in the area of the rental unit would have been approximately \$240.00, and that he paid considerably less by driving approximately 80 km to the United States. The Tenant did not apply to recover the cost of gas. I allow this portion of the Tenant's claim, supported by receipts, in the amount of \$156.02.

I grant the Tenant a monetary award in the amount of \$800.00 for partial loss of use of the rental unit from the period of August 19, 2009, to December 28, 2009 (approximately 1/5 of the worth of the tenancy for 4 months).

I dismiss the Tenant's claim for recovery of the cost of hiring an independent Pest Control Company. The Tenant knew that his unit would be the only one treated in that manner and chose to move out of the rental shortly thereafter.

The Tenant has been compensated for loss of use of the rental unit and his claim for lost holiday pay is dismissed.

A tenant must provide a landlord with one clear month's notice to end the tenancy in a month-to-month tenancy, or the tenant is liable to pay rent up to the time the notice would be effective. A tenant can end the tenancy on short notice if he advises the landlord in writing that the landlord has failed to comply with a material term of the tenancy agreement. If the landlord fails to correct the situation within a reasonable time after written notice is given, the tenant can end the tenancy. This set of circumstances does not apply in this case. Although distressing and disturbing, bed bug infestations

are not considered to be emergency repairs. Therefore, the Tenant's application to recover rent paid for the month of January, 2010, is dismissed. The Tenant's application for recovery of the cost of redirecting his mail is likewise dismissed.

The Tenant did not provide sufficient evidence with respect to his claim for the cost of laundry and this portion of his claim is dismissed.

The Act does not allow for recovery of the cost of photocopying evidence or developing photographs, and I dismiss this portion of the Tenant's claim.

The Tenant has been partially successful in his application and is entitled to recover half of the cost of the filing fee, in the amount of \$50.00

I hereby provide the Tenant with a Monetary Order, calculated as follows:

Meals for family for seven days of treatments	\$267.31
Cost of preparing for treatments	\$61.93
Hotel accommodations for two nights	\$156.02
Devalued tenancy (4 months x \$200.00)	\$800.00
Partial recovery of the filing fee	\$50.00
TOTAL	\$1,335.26

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,335.26** against the Landlord. This Order must be served on the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order 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*.

Dated: December 14, 2010.
