



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application filed by the tenants seeking a monetary order for damages and loss and recovery of the filing fee.

The tenants' total monetary claim is for \$7,500.00 which sum includes the \$100.00 filing fee.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Are the tenant's entitled to the compensation sought?

Background and Evidence

The tenants testified they moved into the rental unit in May 2007. In January 2009 they discovered bedbugs. The tenants say they made repeated complaints to the landlord but nothing was done. The tenants submitted a number of emails to support this claim. Further the tenants submit that the landlord knew there was a bedbug problem in the building prior to this tenancy commencing but did not warn the tenants of the infestation. The tenants say a previous resident manager was fired by the landlord because she could no longer lie to the tenants by telling them that their units had been sprayed prior to their move in which was not the case. The tenants say that had they been warned about the infestation they would not have entered into a tenancy agreement with this landlord in 2007. The tenants say their monetary claim is calculated at a 25% rental reduction for 15 months of their tenancy during which they suffered from bed bug problems and a 50% reduction for the 5 months where they the landlord undertook bedbug treatment and the tenants were required to bag up their goods, etc., in preparation for the treatments.

The landlord testified that this owner purchased the building in 2003 and only became aware of a bed bug problem in some suites, including this suite, in January 2009. Any suite that reported a problem was treated right away. The landlord initially hired one pest control company and when those treatments did not eliminate the problem another company was hired. The landlord undertook 5 bed bug treatments in the individual suites and related common areas and in April 2010 the entire building was treated. Since this event the landlord has developed a new policy whereby when a suite is vacated it is treated for pests before a new tenant moves in. Further, since October 2010 prospective tenants are advised of previous bedbug infestations even though there is no longer a bedbug problem at the present time.

The landlord testified that treating bedbugs is difficult because the bedbugs arrive in the infested belongings of new incoming tenants', they can be brought in by tenants' guests or even by the tenants themselves when they return from travel.

The building manager testified that he has been building manager in this building and has lived in this building for 3 months and has discovered no bedbugs. The property manager testified that he has been a property manager for 15 years and has not previously worked for a company that spent so much money on pest control.

The tenants argue that while the landlord now says that as of October 2010 all prospective tenants are told of previous bedbug problems she said differently in a previous hearing held December 16, 2010 and recorded in the subsequent decision rendered January 14, 2011:

The landlord noted that bedbugs are an issue in the lower mainland. They are brought to buildings by residents and visitors. The landlord treats the rental units but it does not disclose to prospective tenants that there have been bedbugs in the rental property because that would make it more difficult to rent vacant units.

Analysis

In their Application for Dispute Resolution the tenants say that they are claiming damages for "...loss from bedbugs and other damages & loss for health & Safety and for lack of enjoyment..." The tenants say the landlord is responsible for their loss because, the landlord has been negligent. The tenants say the landlord is negligent because the landlord did not advise them of the existence of bedbugs in the rental building prior to moving in. The tenants say if they had been warned they would not have moved in. While the tenants say they have evidence that the landlord was aware in 2007 of the bed bugs they did not produce that evidence and the landlord has testified that the

building became infested with bed bugs in January 2009. In fact the tenants themselves lived in the building from 2007 to 2010 and did not complain of bedbugs until January 2009. I find that the tenants have produced insufficient evidence to support a finding that the landlord knew of a bedbug problem when this tenancy began.

The tenants say the landlord did not address the problem however the claim a rental reduction for the inconvenience they had to go to prepare their rental unit for bedbug treatment on 5 occasions. From this evidence I find that the landlord did address the problem.

Finally, the tenants claim a "...lack of enjoyment..." and I take this to be a claim for a loss or breach of quiet enjoyment. Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, **if preventable by the landlord and he stands idly by while others engage in such conduct**, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. However, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to

minimize disruption to the tenant in making repairs or completing renovations. In this case the matter is the treatment of a bedbug infestation and I have already found that the landlord took reasonable steps to address the problem still there was some disruption to the tenants' quiet enjoyment of their property. The tenants suggest that they lost the use of one-quarter of their rental unit for 15 months and one-half of their rental unit for 5 months yet they have supplied insufficient evidence to support this. However, as there was some loss of quiet enjoyment I will award the tenants \$50.00 for each of the five treatments that took place which required them to take steps to prepare for treatment and remain absent from their rental unit for approximately 6 hours. As the tenants have been partially successful in their claim I will award the sum of \$50.00 towards their fee recovery.

Conclusion

The tenants are provided with a monetary Order in the sum of \$300.00.

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