



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC & FF

Introduction

These hearings dealt with the tenant's application seeking damage for loss of quiet enjoyment due to the landlord's failure to expediently and effectively deal with the bed bug problem in the rental unit.

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.

Issue(s) to be Decided

Did the landlord fail to take reasonable measures to resolve the bed bug problem in the residential property causing the tenant to lose quiet enjoyment of her rental unit?

Even if the landlord did take reasonable steps to resolve the bed bug problem, did the tenant still suffer a loss of quiet enjoyment?

Is the tenant entitled to monetary relief for furniture she disposed of, laundry expenses and storage costs due to the bed bug infestation in her rental unit?

Background and Evidence

This tenancy began on January 1, 2003 for the monthly rent of \$650.00 and a \$325.00 security deposit paid by the tenant on February 1, 2003. The current monthly rent is \$665.00.

The tenant is seeking compensation for loss or damage suffered due to a breach of the tenancy agreement by the landlord as follows:

Loss of comfort and use of floor due to negative experience from bed bug infestation – 5% loss of use rent reduction requested	(Combined with sum below)
Replacement of hide-a-bed	\$1,000.00
Replacement of love seat	\$500.00
Miscellaneous expenses	\$285.57
Recovery of filing fee paid for this application	\$50.00
TOTAL	\$3,469.00

The issue with bed bugs began in April 2010 when the tenant began to find bites. As a result of this early infestation the tenant threw away her hide-a-bed. The tenant stated that she informed the building manager of the first suspected bites on April 1 and the landlord did not inspect the rental unit until April 19, 2010. The tenant's unit was treated on April 22, April 29, and May 6. As of May 14, 2010 the Pest Control Company could not visually confirm any further bed bugs and the tenant was not having any more bites.

Unfortunately, around June 21, 2010 the tenant began experiencing bites again but did not notify the landlord that the pests were back until July 15, 2010. The tenant also decided on July 15, 2010 to throw out the love seat she brought in to replace the hide-a-bed which she previously disposed of.

The landlord arranged for an inspection of the unit on July 26, 2010. The tenant requested that the landlord not wait for the rental unit to be inspected and just proceed to complete a treatment of the rental unit. The landlord indicated to the tenant that an inspection was mandatory and that the inspection of July 26, 2010 could not be changed as the Pest Control Company would also be inspecting other units adjacent to the tenant's unit.

The tenant's unit, and other units were inspected by a dog specialized in bed bug detections. It was determined that the tenant's unit had bed bugs around the bed and around the couch. The tenant did not learn what the results of the inspections of the other units were.

The landlord arranged for the tenant to have a Gold Bed Bug Treatment on July 29, 2010. A Gold Bed Bug Treatment uses traditional chemical spraying and steam

application to specific areas. The tenant stated that the treatment did not occur for two weeks after she had notified the landlord that she was being bitten again.

The tenant's unit continued to have signs of bed bugs on August 6, 2010 after it was inspected again. The landlord arranged for a second Gold Bed Bug treatment for August 11, 2010. This treatment was followed up by a canine inspection on August 18, 2010.

The tenant expressed frustration that despite the fact that she continued to report being bitten, the landlord repeatedly delayed treatment until after the rental unit was inspected by the canine unit. The tenant submitted that this was an unnecessary delay when she had positive proof of bed bugs from being bitten.

As an example, the tenant stated that she discovered a live bed bug on August 16, 2010 but the landlord still insisted on continuing with the canine inspection on August 18, 2010. The situation reached its pinnacle for the tenant at this point on August 20, 2010 when she woke up with significant bed bug bites. The tenant began calling the city, health and environmental departments and the Pest Control Company used by the landlord in an attempt to finally have this issue resolved.

The tenant received notice that her unit would be treated on August 23, 2010 but she felt this was too long and sought an alternative place to stay and requested that the landlord arrange an earlier treatment. Ultimately, the tenant was able to arrange a treatment for August 21, 2010 by contacting the Pest Control Company herself. The tenant also stated that she was told that treatments are most effective when they occur within a five to ten day period while the landlord was only arranging treatments every two weeks or more apart. The tenant also questioned whether the landlord was treating the adjacent apartments but the pest control company would not give her this information.

The tenant had the building manager discuss some of her issues directly with the Pest Control Company and confirmed that after the treatment on August 21st the rental unit would be inspected by the canine on August 25th and a treatment was booked for August 26th in the event that the canine confirmed the continued presence of the pest. The landlord also offered the tenant a vacant rental as temporary accommodation; however, the tenant submitted that the rental unit offered was not clean and the landlord did not initially have any mattresses where the tenant could sleep. The tenant eventually booked a hotel for the night of August 20, 2010.

On August 21st the pest control company arrived at the rental unit two hours before the scheduled time and refused to treat the tenant's unit because she had not finished preparing the rental unit. The tenant stated that the technician was more concerned about catching a ferry for a personal event than returning to treat the rental unit at the scheduled time. The tenant contacted the landlord requesting that they intervene; however, the landlord felt that nothing could be done.

The tenant stated that because of the inconsistency with the pest control technicians expectations for level of preparedness of the unit, she purchased several storage bins and removed all of her CD's, DVD's, records, photo albums, extra bedding and linen, and other items such as office supplies from the rental unit and put all these items into storage. The tenant has not returned any of these items to the rental unit due to her concern that the bed bug problem will resurface. The tenant stated that the resident manager expressed to her the opinion that the technician's expectations of level of preparedness of the rental unit were unreasonable. The landlord was prepared to provide the tenant with a month's free storage which the tenant accepted. The tenant also utilized some other storage available through her family.

The tenant also conducted some internet research and discovered an alternative source of treating bed bugs called Diatomaceous Earth which she had purchased several times and spread around her unit. The tenant submitted that it is her belief that this product has been successful in ridding her unit of the bed bug infestation.

With some intervention on the part of the resident manager a new treatment was booked for August 23, 2010. The tenant submitted that when the landlord was motivated to assist her it was possible to have a treatment arranged on the same day as requested. The tenant submitted that again the technicians arrived at the rental unit several hours earlier than scheduled.

The tenant continued to have problems with the technicians from the pest control company on August 27, 2010 which was the re-scheduled canine inspection since the appointment on the 25th had been cancelled. The technician refused to allow the canine to inspect the unit because the tenant had Diatomaceous Earth, a potentially hazardous situation for the dog, in the rental unit. The tenant stated that even though she vacuumed the product up the technician still refused to allow the inspection to occur. The tenant's unit was not inspected until September 1, 2010. The canine inspection determined no bed bug activity in the rental unit.

On September 13, 2010 the tenant discovered another live bed bug and informed the landlord. The landlord again arranged for a canine inspection which was scheduled for

September 17, 2010. The tenant requested an earlier inspection but the company was not available for any earlier time. The tenant discovered another live bed bug on September 16, 2010. On September 17, 2010 the inspection did not find any signs of live bed bugs but recommended that the adjacent rental unit should be treated.

The tenant discussed the situation next with the landlord on September 24, 2010 and was informed that no bugs were discovered during the inspection and no treatment was recommended for the tenant's unit. The tenant next received notice of a canine inspection scheduled for October 15, 2010. The tenant was not aware of why the inspection was scheduled. This inspection again confirmed no bed bug activity.

The tenant submitted that she continues to feel that the bed bugs will reoccur at anytime and continues to feel that the landlord will not adequately resolve the problem. For this reason the tenant has not returned her possessions to the rental unit and still feels unable to enjoy the floor of the rental unit which is why the tenant has sought a rent reduction for October and November 2010 despite no bed bug activity. The tenant stated that the landlord has been negligent by failing to properly treat her rental unit in a timely and effective manner and by failing to treat the units adjacent to her unit. As a result, the bed bug problem has been ongoing for many months longer than necessary.

In support of this application the tenant also provided copies of e-mails and letters received from the pest control company, copies of the receipts for her expenses including one night spent at a hotel, the cost of the Diatomaceous Earth, and a letter to all tenants in the residential building about the bed bug problem.

I note that the letter of November 23, 2010 from the pest control company to the landlord indicates that inspections were conducted in other units adjacent to the tenant's rental unit on October 15, 2010 and no live activity was discovered. The tenant's evidence also states that rental units adjacent to the tenant were inspected by the canine unit on July 26, 2010 but no information has been provided on what was discovered during the inspections.

The landlord disputes the tenant's claim and submitted that they have reasonably and diligently attempted to resolve the bed bug problem based on the expertise and advice of the pest control company. The landlord submitted that the tenant's rental unit was treated six times and inspected nine times and there have been no further bed bug problems since mid September 2010. In addition, the landlord submitted that the tenant's right to quiet enjoyment must be balanced against the landlord's obligation to treat the tenant's unit and stated that both the tenant and the landlord have experienced a loss as a result of this pest.

In support of the landlord's defence the pest control company was brought in as a witness. The representative of the pest control company explained that it is standard practise to conduct inspections of the rental unit with the canine before treating. The reason for this is to confirm presence of the bed bugs and to identify areas where the bugs are active to best identify treatment areas. The witness pointed out that on several occasions the canine inspection did not discover live bed bugs but confirmed bed bug activity. The witness stated that canine inspections also guide the decision whether adjacent units require a treatment.

The witness also discussed how difficult it is to tackle this pest and the limitations involved. Current approved chemicals are not normally sufficient and the bed bugs continue to thrive and, despite treatment efforts, can easily be reintroduced into previously treated areas.

The witness also stated that it is not recommended for tenants to remove their possessions from an infested unit as when the items are brought back to the rental unit it is possible to reintroduce the insect.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant is seeking a monetary claim related to damage or loss suffered as a result of the landlord's failure to reasonably and properly address and eliminate a bed bug infestation which occurred in her rental unit. Specifically, the tenant alleges that the landlord intentionally failed to complete necessary and timely bed bug treatments of her rental unit which resulted in the infestation continuing month's longer than necessary. As a result of this failure the tenant submits that she incurred expenses related to the rental unit becoming increasingly uninhabitable and she suffered a loss of quiet enjoyment of the rental unit.

The tenant relies on the landlord's continued insistence to have the rental unit inspected by the canine before having any treatments completed. The tenant has submitted that it was unnecessary and unreasonably delayed the actual treating process, leaving her exposed to the bed bugs for weeks longer than necessary. The tenant submitted that treatments should occur within 10 days of each other and in her unit the treatments were usually two weeks or more apart. The tenant also submitted that the landlord failed to adequately address the problem by failing to treat the adjacent rental units, relying on

her evidence which suggests that no inspection or treatment of the adjacent rental units occurred until July 2010. Unfortunately, there was an absence of evidence about whether the adjacent units were treated.

Alternatively, the landlord relies on the opinion and evidence of the pest control company and submits that they followed standard procedure with respect to treating the insects. The landlord's witness provided evidence that the canine inspections help reduce unnecessary treatments and pin point where the bed bug activity is occurring. The idea is that treatments can be focused and canine inspections are recommended.

Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

Residential Tenancy Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

Claims in Tort

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

[Emphasis added]

Where a rental unit is damaged by an unforeseen event, such as fire, flooding or pest infestation and it is upon the landlord to repair the rental unit and residential property. Tenant's insurance generally covers damages or loss a tenant may incur as a result of an unforeseen event. Damage to a tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

In light of the above, it is upon the tenant to show that the landlord was negligent in addressing the bed bug infestation. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury

to another party. Accordingly, I have considered all of the evidence before me to determine whether the tenant has shown that the landlord acted unreasonably in treating the tenant's rental unit for bed bugs.

In the circumstances before me I am not persuaded that the landlord was negligent and I find that the landlord took reasonable steps to address the bed bug infestation. Although there were some delays, which were attributable to both the landlord or landlord's agents and the tenant, they were not unreasonable. In a five to six month period the tenant's unit was treated six times. I also found that the use of the canine inspections was also reasonable and resulted in only a minor delay in the tenant receiving treatments. After the initial three treatments in April and May it appeared the problem had been resolved, unfortunately, the bed bugs were able to re-establish themselves. Once the tenant informed the landlord of the reoccurrence, the landlord again took reasonable measures to treat the problem which was resolved by mid September 2010. I am not persuaded that a difference in a few days between treatments is negligent and I am not persuaded that the problem was extended due to the landlord's failure treat the adjacent units.

The tenant has made speculative arguments that the landlord was negligent by failing to inspect or treat the adjacent units but her speculations are not supported by the evidence. The evidence suggests that the landlord did have the adjacent rental units inspected by the Pest Control Company and as a result of those inspections the landlord made a reasonable decision on how to proceed with treating the infestation. While the tenant expressed many times her frustration that the landlord did not share the result of inspections with her, I note that the landlord had no legal obligation to do so.

I am persuaded by the evidence of the Pest Control Company that it is normally unnecessary for individuals to throw away furniture as it can be treated and that it is not recommended that individuals gather up and store items as it can become a source of reintroduction of the pest. In the absence of any evidence to confirm it was necessary to dispose of the tenant's two pieces of furniture, I deny the tenant's claim for monetary relief related to the loss of the hide-a-bed and the love seat. I find that the tenant was premature in disposing of these pieces of furniture and on the balance of probabilities they could have been effectively treated making it unnecessary to dispose of them.

In the case of a bed bug infestation, where a tenant's liability or negligence is not an issue, the landlord takes on the cost of controlling or eliminating the infestation and the tenant bears the inconvenience and discomfort of having the bed bugs in the unit. In

most cases each party experiences mutual loss due to a pest for which neither party has control over.

Based on this I find that the landlord is not responsible for reimbursing the tenant for the cost of doing laundry in relation to the bed bug treatments. I also deny the tenant's claim for other miscellaneous expenses such as bleach, storage bins, tape and Diatomaceous Earth. These are costs experienced due to the pest and completing the laundry, purchasing cleaning products, storage bins and other measures to contain and control the problem were part of the tenant's obligation under section 32 of the *Act* to help eradicate the bed bugs. While some of these expenses were expected and others were a personal choice of the tenant to utilize, they were expenses incurred as a result of the inconvenience of the pest and not a result of the landlord being negligent in treatment of the pest.

I also deny the tenant's claim for loss of quiet enjoyment related to loss of use of the floor and general decline in enjoyment of the rental unit due to the infestation. While I appreciate the psychological impact of experiencing an insect infestation, this is again an expected result of the infestation which is not in the control of the tenant or the landlord.

Finally, I deny the tenant's claim for expenses incurred in preparing for this dispute resolution proceeding. The *Act* only provides for the recovery of the filing fee and all the costs associated with pursuing a claim under the *Act* are not recoverable.

However, I do accept the tenant's request for reimbursement of a night's hotel in the amount of **\$147.37**. I accept that due to the re-infestation the tenant experienced a significant number of bed bugs bites and I accept that the landlord agreed it was reasonable that the tenant have alternative accommodation. While I acknowledge that the landlord attempted to provide alternative accommodation in the residential building, I accept that in the absence of sleeping mattresses there was a reasonable ground for the tenant to book the accommodation.

I also grant the tenant's request to recover the \$50.00 filing fee paid for this application. I find that the tenant is entitled to monetary relief of **\$197.37** and I Order that the tenant may deduct this sum from her rent owed to the landlord on March 1, 2011.

Conclusion

The tenant's application was granted in part and I have determined that the tenant is entitled to monetary relief in the amount of **\$197.37** which the tenant may deduct from her rent owed to the landlord on the 1st of March 2011.

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: February 16, 2011.

Residential Tenancy Branch