



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, RR, FF

Introduction

This hearing dealt with joint applications by the tenants for monetary orders, orders compelling the landlord to comply with the Act and provide services and orders permitting the tenants to reduce their rent. All parties participated in the hearing.

Issues to be Decided

Are the tenants entitled to monetary orders as claimed?
Should the landlord be ordered to comply with the Act or provide services?
Should the tenants be permitted to reduce their rent?

Background and Evidence

Three rental units are represented in these applications. The tenants' claim is related to problems with bedbugs. The tenants S.B. and G.L. were involved in a previous dispute resolution hearing on June 7, 2011 (the "June 7 Hearing") in which they were granted monetary awards compensating them for losses up to the date of that hearing. The tenants A.V. and F.V., who share the third unit and were represented at the hearing by A.V., had not brought a claim prior to this hearing.

The rental units are located on the second floor of a building which houses a total of 101 units. The parties agree that there have been bedbugs in the subject units.

The tenant S.B. gave evidence that after the June 7 Hearing, she had no sign of bedbugs in her unit until July 11 when she found a bedbug on the bathroom floor. She reported the incident to the landlord and the pest control company retained by the landlord for all pest-related issues ("PCO") attended the same day to distribute a white powder in the area. On August 12, S.B. again found bed bugs in her bathroom. The landlord gave evidence of a PCO work order which listed treatment of several units on that date but had S.B.'s unit crossed out. The landlord maintained that the PCO technician attended at S.B.'s unit on August 12 but was denied entry. S.B. denied that she had prevented treatment on August 12. The landlord did not ask the technician to testify regarding this invoice. S.B. testified that on

August 17, PCO attended at the rental unit with a dog that was trained to detect bed bugs. The dog did not alert in S.B.'s suite. S.B. declined a treatment offered on August 19 and stated that she did so because the dog had indicated that there were no live bed bugs in the suite. S.B. further testified that she found a bed bug in her kitchen on August 23.

The tenant G.L. gave evidence that since the June 7 Hearing, PCO brought in the aforementioned dog and that on June 10 the dog gave an alert at one end of her couch. G.L. found bed bugs in her kitchen on June 22 and on June 24, PCO attended and distributed a white powder around her kitchen baseboards. G.L. found bed bugs again on June 26 and more powder was distributed in that area. On July 11, G.L. found another bug and reported it to the landlord. The landlord submitted a copy of a PCO work order dated July 11 on which the technician had noted "206# refused to be treated today which can make it worse." The technician testified via telephone at the hearing and did not have a clear recollection of the event, but confirmed that the record on the work order was accurate. G.L. testified that she had spoken with the landlord the night before and had been told that the technician would inspect the unit and determine whether treatment was required. G.L. had at that time asked the landlord whether she should pack her belongings in preparation for the treatment and claimed that the landlord told her that the technician would be inspecting to determine whether further treatment was required and that packing was not required. The landlord gave evidence that she was told by the technician that G.L. had told him she had wiped up some of the powder which he had distributed because her granddaughter was coming to the unit. The technician had a vague recollection of G.L. talking about her granddaughter, but no specific memory what she had said. G.L. strenuously denied having wiped up the powder or having told the technician that she had done so.

G.L. gave evidence that another bedbug was found in her kitchen on July 29 and August 4, which she reported in early August. More bugs were found in G.L.'s unit on August 8. The landlord presented a work order dated August 12 which indicates that G.L.'s unit was not treated on that date because she had "refused to do". G.L. denied having refused treatment. On August 18 the PCO dog gave what was called a "slight alert" at one end of G.L.'s couch. G.L. testified that PCO advised her early in the process that she should either remove her couch, subject it to an extreme heat treatment or cover it with a prescribed plastic cover. G.L. did not wish to discard her couch and was told that the heat treatment in her unit would not work because there were too many avenues for the heat to escape, thereby rendering the treatment ineffective. G.L. declined the offer of a plastic cover for which the landlord is prepared to pay because she said she doesn't "live like that."

A.V. and F.V. were away from the unit until March 2011. F.V. was bitten by bed bugs upon her return and went for treatment, but doctors were unable to identify the cause of her reaction. On July 17 they discovered bed bugs in their unit, reported the situation to the

landlord and the unit was treated for the first time on July 22. A.V. discovered bugs on August 1 and 4 and their unit was treated by PCO on August 5. On August 9, 11 and 12 more bed bugs were found, but A.V. did not report these until August 16. When questioned, A.V. could not recall why he had delayed in reporting. More bugs were found on August 16 and on August 18, PCO attended at the unit with their dog, who alerted to the presence of bed bugs. The unit was treated again on August 19. A.V. found bed bugs on August 22.

The tenants claimed that the continued presence of bed bugs has had a significant impact on their lives. S.B. testified that she has experienced stress for which she is medicated. She stated that except for a 6 week period in which she found no bugs and believed the issue in her unit had she sleeps with lights on because she understood that bed bugs only emerge in the dark. G.L. testified that she is also suffering from stress and that she takes sleeping pills, but acknowledged that the pills had been prescribed prior to the discovery of bed bugs. She stated that she has reacted to numerous bed bug bites and that she no longer sits on her couch because of the continued presence of bedbugs there. A.V. testified that both he and his wife have been bitten, his wife having reacted severely enough to require medical treatment. He further stated that he had spent considerable money laundering his clothing on the advice of PCO. All the tenants testified that they have been inconvenienced by having to keep their clothing in plastic bags.

The landlord testified that as soon as she received complaints, she contacted PCO, who usually attended within one or two days of the report. The landlord testified that 2 other units which were not represented in this proceeding had not complied with the preparation protocol as clearly explained by PCO and alleged the failure of the occupants of the other two units as well as S.B. and G.L.'s refusals to permit treatment on occasion had exacerbated the situation. The landlord further testified that the hallway on the second floor all the way to the ground floor stairs had been treated as well. The landlord argued that the tenants had failed to properly mitigate their losses by failing to permit treatment on occasion and failing to report the finding of bed bugs in a timely manner.

The parties agreed that two other units on the same floor as the subject units had been treated for bed bugs and that the occupants of those units had not complied with treatment protocol.

Analysis

It is appropriate to begin an analysis of the claim by commenting on the issue of fault. At the hearing there was some suggestion that the presence of bed bugs was the fault of the landlord. There is no evidence to show that the presence of bed bugs in the building is the fault of the either the landlords or the tenants of the subject units, but even in the absence of

fault, the landlord may still be held liable for losses resulting from bed bugs. The landlord has a contractual and statutory obligation to provide to the tenants units in which they can experience quiet enjoyment. Issues can arise in any home which temporarily inconvenience tenants and such temporary inconveniences would not normally be compensable in the absence of fault. However, the situation with the bedbugs has continued for an extended period of time and I find that the tenants have not been able to fully enjoy the units as a result.

I find that the landlord has acted reasonably in repeating treatments each time a report of bed bugs is made. I can find only one occasion in which more than a few days passed between the time a report was made and the time when the technician attended to treat the affected unit. I find that the landlord is doing everything reasonably within its power to combat the problems encountered. Accordingly, I find it unnecessary to order the landlord to comply with the Act or provide services as the landlord is already in compliance and I dismiss the tenants' claims for those orders.

I find that in the 12 week period from the June 7 Hearing to the present hearing, S.B. suffered a loss of quiet enjoyment for 7 weeks. Although there was not a significant presence of bed bugs in her unit during that period, I find that the knowledge that there were at least a few bugs was sufficiently disturbing to cause her distress. I find that S.B. is entitled to compensation for that period, but I find that this compensation should be modest. I am not satisfied that S.B. declined treatment on August 12. Her unit number is merely crossed off the work order whereas another unit which had refused treatment was specifically noted to have done so. I find that S.B. unreasonably refused treatment on August 19. Although the dog had not alerted to the presence of bed bugs on August 17, S.B. knew that there had been bed bugs in the unit on August 12, just one week before the offered treatment. The fact that the technician offered treatment despite the dog's findings suggests that the technician was aware that there was a margin of error and that that it was preferable to err on the side of caution. I would have awarded S.B. \$311.50 which represents 25% of the rent paid during the 7 week period in question, but find it appropriate to reduce that award by one half as I have found that she failed to mitigate her losses. I award S.B. \$155.75.

I find that G.L. suffered a loss of quiet enjoyment for a full 12 weeks since the June 7 Hearing. Again, there were not a significant number of bed bugs in her unit, but the fact that there was some presence of the pests had an impact on her. I find that G.L. has also failed to mitigate her losses. It was recommended to her that she treat or cover her couch, which is the location at which the dog had consistently alerted, but as the couch could not be treated, she chose to leave it uncovered which I find exacerbated the pest problem in her unit. I accept that G.L. reasonably refused treatment on July 11 when she had not had adequate opportunity to prepare her suite, but I find that G.L. refused treatment on August 12. Although she denies having refused treatment, I find that the work order accurately reflects the events

which occurred as the technician's payment depended on the accuracy of the work order. I would have awarded G.L. \$626.25 which represents 25% of the rent paid during the 12 week period in question, but I find it appropriate to reduce that award by 60% as I have found that she failed to mitigate her losses. I award G.L. \$275.50 which represents \$250.50 for loss of quiet enjoyment and \$25.00 recovery of the filing fee paid to bring her application.

I find that A.V. and F.V. suffered a loss of quiet enjoyment for 6 weeks from the time they reported the bed bugs on July 17 to the date of the hearing. Although they were being bitten prior to July 17, I find that the only period of time which attracts compensation is the period after they advised the landlord of the problem as the landlord cannot be expected to treat an infestation of which they are unaware. I find that A.V. and F.V. are entitled to compensation for that 6 week period and I award them \$238.50 which represents 25% of the rent paid during the 6 week period in question.

I dismiss the tenants' claims for an order permitting them to reduce future rent. The problem with the bed bugs has decreased considerably over the past several months and as the parties continue to work cooperatively in this battle, I find it likely that they will successfully eradicate the pests. It is not possible to determine in advance what impact the few remaining pests will have over the coming months. If the tenants continue to experience a loss of quiet enjoyment, they are free to make an application for further compensation.

Conclusion

S.B. is awarded \$155.75, G.L. is awarded \$275.50 and A.V. and F.V. are awarded \$238.50. The tenants may deduct this sum from future rent owed to the landlord.

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: September 06, 2011

Residential Tenancy Branch