



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement, for an order allowing a reduction in rent, and to recover the filing fee for the Application.

The tenants, landlord and landlord's witness appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, to respond each to the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Have the tenants established an entitlement to a monetary order pursuant to sections 67 and 72 under the Act?

Background and Evidence

This month to month tenancy began on September 1, 2010, ended on December 3, 2011, when the tenants vacated the rental unit, monthly rent was \$1,500.00 and the tenants paid a security deposit of \$750.00 at the beginning of the tenancy.

I heard testimony that the rental unit is on the upper level of a home, with the landlord's cousin, who appeared as her witness, living in the lower level.

The tenants' monetary claim is in the amount of \$3,332.00, which includes \$1,000.00 for loss of quiet enjoyment, \$200.00 for loss of kitchen for 3 days, \$300.00 for the landlord not fulfilling her duties as a landlord, \$1,000.00 for lying under oath, \$252.00 for lost wages, \$320.00 for cleaning/steaming the rental unit, \$140.00 for loss of a bunk bed, and \$120.00 for preparing for hearings.

In support of their application, the tenants' relevant evidence included copies of communication between the parties regarding the issues of the dispute resolution, a

copy of a Decision from a previous dispute resolution hearing, and a bed bug inspection report, dated October 21, 2011.

As to their alleged loss of quiet enjoyment, the tenant submitted that they informed the landlord on September 2, 2011, that bedbugs were present in their rental unit. Thereafter the landlord hired a pest control company, who confirmed that bedbugs were present in the rental unit, particularly to two mattresses and a bunk bed.

The tenants stated that the landlord's responded by saying that it was their home and their responsibility, and she would not pay for a treatment. The tenants submitted that thereafter it was necessary to steam clean and vacuum on a daily basis in an effort to rid the rental unit of bed bugs, which formed their claim for time spent cleaning and steaming.

As to the loss of their kitchen for 3 days, the tenants submitted that despite using their garbage disposal unit properly, the unit became clogged and unusable. Ultimately, according to the tenants, they were forced to pay for a plumber as the landlord refused to repair the sink. Upon query, the tenants stated that after carving some pumpkins, they put the seeds and "guts" of the pumpkin into the garbage disposal unit.

As to their claim for the landlord not fulfilling her duties as a landlord, the tenants submitted that despite numerous requests, the heating in their rental unit was never properly addressed. The tenants stated that when the rental unit began to overheat, they suspected the furnace was broken. Upon attempting to contact the landlord, the tenants were unsuccessful. Thereafter the tenants were unsuccessful in reaching the landlord's emergency contact for a period of time. It is noted that the emergency contact was the lower level tenant, who acted as the landlord's property manager.

Upon her return, the landlord's response to the overheating situation was to take out the lights in the rental unit and replace them with another type of bulb, as well as relocate the thermostat, formerly in the tenants' rental unit, to a central location and have it reprogrammed.

The tenants submitted that the heating has not worked properly since the landlord's attempt to resolve the situation.

As to the tenants' claim that they are entitled to compensation due to the landlord allegedly lying under oath, the tenant contended this amount would serve as a penalty.

The tenant also submitted that they had to get rid of the bunk bed, which he estimated to be \$120.00.

In response to the tenants' application, the landlord submitted that she has not deprived the tenants of their rights to quiet enjoyment, as she understood the definition under the Act.

The landlord stated that she did not share the results of the 2nd inspection by the pest control company as she was not asked for it.

The landlord stated that she was not responsible for the bedbug treatment, as she surmised that the tenants' children brought the bedbugs to the rental unit. As a result, the landlord stated she did offer to pay for one-half of the treatment, which included a treatment for the entire house, including the downstairs rental unit. Despite this, the tenants never took the landlord up on her offer.

The landlord stated she was not responsible for the lack of use of the kitchen sink, as it was the tenants who broke the garbage disposal unit by putting the pumpkin contents in the unit.

As to the heating situation, the thermostat was formerly in the tenants' rental unit, and that the furnace heated the entire house, including the lower rental unit. According to the landlord, the upper and lower tenants were to cooperate with each other in insuring that the lower unit received enough heat.

When the tenants began complaining about the heat, and the lower tenant began complaining about the lack of heat and cooperation by the tenants, the landlord submitted that she believed the tenants were mis-using their heating source, as she lived in the rental unit for a number of years, and that the furnace was fairly new. The landlord also pointed out that it was necessary to adjust the heating as the tenants were not cooperating with the lower tenant in providing enough heat.

The lower tenant testified that she had no problems with the tenants last winter, that when she asked them to turn up the heat, they turned up the heat. However, this year, the tenants have refused to cooperate and she has been too cold.

In response to the landlord's testimony, the tenants pointed out that the pest control company inspection report stated that it was impossible to determine the source of the bed bugs. The tenants contended that the landlord, in a previous dispute resolution hearing, lied about the pest control company's report and the date she received it.

The tenants denied depriving the lower unit of heat, as they did communicate with the lower tenant, that the lower rental unit had its own fireplace and thermostat.

Analysis

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

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant

cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Loss of quiet enjoyment, rent reduction, not fulfilling landlord duties, cleaning and steaming- I consider that these claims all relate to the issue of the bedbugs and heating complaints.

I accept the testimony of the tenants that the landlord was notified on or about September 2, 2011, that there were bedbugs in the rental unit and I find that the landlord's pest control company inspection report of September 16, 2011, confirmed the same.

Due to the confirmation of the bedbugs, I next considered the response of the landlord in relation to what, if any, compensation would be due to the tenants for the inconvenience the bed bug infestation caused; by assessing the landlord's actions against the requirements of the Act.

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, 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 tenants have shown that the landlord acted unreasonably in treating the tenants' rental unit for bed bugs.

In the circumstances before me, I find the landlord failed to provide any treatment for the bedbug infestation, instead the landlord stated that the responsibility was upon the tenants to provide treatments. The landlord claims that the tenants' children were responsible for bringing the bedbugs into rental unit; however, the landlord provided no proof.

Due to the landlord's confirmation that she did not take any reasonable measures to remedy or treat the bedbug infestation, I am persuaded that the landlord was negligent in this situation. I therefore find that the tenants are entitled to monetary compensation due to the landlord's negligence in treating the bedbug infestation, in violation of section 32, which I find caused a loss in the value of the tenancy.

Although the pest control company's inspection report of October 21, 2011, confirmed that the rental unit no longer had bedbugs, the landlord did not share the results of the inspection report with the tenants. I therefore find the tenants are entitled to compensation for the loss of the value of the tenancy from September 2, 2011, when they informed the landlord of the bedbugs in the rental unit until December 3, 2011, when the vacated the rental unit, as well as for their efforts in eradicating the bedbugs. I find a reasonable amount of compensation for the loss of use, cleaning, steaming and not fulfilling landlord duties would be **\$600.00** (\$200.00 per month for September, October and November 2011).

I also reject the landlord's assertion that the bedbug issue had previously decided in dispute resolution hearings, as the Decision mentioned by the landlord dealt with a Notice to End Tenancy.

As to the issue of the heating, while I do not condone the landlord's assertion that the upper tenants are to be responsible for the lower tenant's comfort levels, I do find that the landlord took reasonable measures to address the tenants' complaints about the heating. Although the landlord relocated the thermostat, the thermostat was reprogrammed to what should be a comfortable heating level, with the landlord's

instructions to monitor the heating for a short period of time so that adjustments could be made.

I also find that the tenants failed to prove that they suffered a loss of use or are entitled to monetary compensation under the Act for an alleged deficient heating system.

Due to the above, I **dismiss** the tenants' claim for compensation for insufficient heating in the rental unit.

Loss of kitchen for 3 days-The landlord stated that the tenants were responsible for breaking the garbage disposal unit by placing the contents of at least 4 pumpkins in the unit and the tenants did not deny this. I do not find it a reasonable use of a garbage disposal unit to place the contents of at least 4 pumpkins in the unit and I accept that the tenants were responsible for the loss of the kitchen sink. I therefore **dismiss** the tenants' claim for loss of the kitchen for 3 days.

Lying under oath-I find the tenants have submitted insufficient evidence that the landlord lied under oath or that a claim for compensation for such is a remedy found in the Residential Tenancy Act. I therefore **dismiss** their claim for **\$1,000.00**.

Loss of bunk bed-I find the tenants submitted insufficient evidence that it was necessary to rid themselves of the bunk bed or that the landlord is responsible for their actions in this regard. I have no evidence before me that the proper recourse for treating bedbugs is dispose of property. I therefore **dismiss** their claim for **\$120.00**.

Wages lost/preparing for hearings- Landlords and tenants are only entitled to recover costs for damages or losses directly related to breaches of the Act or the tenancy agreement, pursuant to section 67 of the act. Costs incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under section 72 of the Act. I find that I do not have authority to award any other costs related to a dispute resolution proceeding and I therefore **dismiss** the tenants' claim to recover costs related to attending hearings or preparing for hearings.

I find that there was merit to the tenants' application and I therefore award them recovery of their filing fee of \$50.00.

Conclusion

Due to the above, I find the tenants are entitled to a **monetary order** of **\$650.00**, comprised of loss of the value of their tenancy, in the amount of \$600.00, and the recovery of the filing fee for \$50.00.

I am enclosing a monetary order for \$650.00 with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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 13, 2011.

Residential Tenancy Branch