



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC FF

Introduction

This hearing convened on November 14, 2011, and reconvened for the present session on December 5, 2011. This decision should be read in conjunction with my interim decision of November 14, 2011 which was corrected December 5, 2011.

Issue(s) to be Decided

1. Has the Tenant met the burden of proof to obtain monetary compensation for damage or loss under the Act, regulation, or tenancy agreement, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

At the outset of this reconvened hearing I noted that there was a clerical error on page 2 of my interim decision of November 14, 2011 in the third last sentence of the first paragraph which should read:

*The first payment received from the Ministry for the roommate was received by the Landlords on November 19, **2010**; and not November 19, 2011 as written.*

The parties were advised they would be sent a corrected decision dated December 05, 2011.

A discussion followed whereby the Tenant was advised that he was within his rights to short pay his next rent payment by the onetime award of \$100.00 and that the Landlord could not refuse this as this was the legally binding Order issued in the November 14, 2011 decision.

I further explained that the Tenant, named in this dispute, is the sole tenant of the subject rental unit as of April 5, 2011 and is responsible for the full rent of \$750.00 per month. The Tenant advised that he has brought on a roommate as of December 1, 2011, and that he has not requested that this additional roommate be added to his

tenancy agreement as of yet. I explained to the Tenant that this roommate, if not added as a co-tenant to his tenancy agreement by the Landlords, is an occupant and that I would provide the definition of an occupant in my analysis.

The Agent stated that the tenancy agreement prohibits additional occupants. I informed the Landlord we were here today to discuss the Tenant's application and that the Landlords were at liberty to seek guidance on this matter by speaking to an Information Officer at the *Residential Tenancy Branch* at 1-800-665-8779.

The Tenant affirmed he is seeking \$20,000.00 compensation for having to deal with a bedbug infestation for over two years. He quoted the municipal by-law that states a landlord must maintain a rental unit. He advised that approximately one year ago he reported to the Landlords that he had bed bugs but the Landlords refused to spray his rental unit. He referenced his written statement which accounts when the pest control company came to his rental unit and gave him \$50.00 worth of a cleaning product to spray his couch with.

The Tenant alleges that he has not been able to work because his work as a professional he cannot go into his client's businesses or their homes with bed bugs crawling out of him.

the Tenant then advised that when the Landlord sprayed his rental unit the first time in November 2010, he was poisoned by the spray. He confirmed that he did not submit evidence to support that he was poisoned but stated that when they came and sprayed a second time, without giving him notice, he became ill again for three days. He stated he had bagged all of his possessions and prepped his apartment for the second spraying but they never came and then he was sick, so he knows they came without notice.

The Tenant confirmed he has never put any of his requests for bed bug or mice treatments in writing. The Tenant stated that he did not seek a remedy through the *Residential Tenancy Branch* prior to filing his application on October 19, 2011 because the Landlords kept telling him they were going to treat his unit but just never showed up.

When asked why he did not come for assistance sooner the Tenant stated the manager is his friend and the manager would give him work to do around the building as the Tennant was able to perform various jobs for the Landlord.

The Tenant stated he is entitled to \$20,000.00 because he has not been able to rent out his apartment and cannot conduct his professional business with bed bugs. He has

waited for the Landlord to fix the problem since 2010 as they keep saying they are going to fix it.

The Landlords' Agent affirmed there was a report of a bed bug problem back in October 2010, from a different apartment, and after checking all of the rental units three units requested treatment, including this Tenant. The units were first treated on October 13, 2010, by a professional pest control company, and when they returned for the second treatment the Tenant refused the pest control company access to his rental unit so they left him the bottle of spray to be applied to his furniture. The Tenant was also left instructions to vacate the unit for a minimum of four hours after spraying it. Since the second spray was conducted in October 2010 the Landlords have not had any reports of a bed bug problem.

The Resident Manager confirmed he has resided and worked at this rental unit for over seven years. He confirmed it was a different Tenant in unit 201 who first reported the bed bug problem back in October 2010 and no other tenants have complained of a bed bug problem since. The Resident Manager stated that he has had no complaints or reports of bed bugs from this Tenant.

The floor was turned to the Tenant for his closing remarks, at which time he requested an adjournment so he could provide additional evidence to support his application. I reminded the Tenant that he was instructed during the November 14, 2011 hearing to have all evidence submitted to the *Residential Tenancy Branch* and the Landlord no later than November 19, 2011, so that the Landlord had an opportunity to respond prior to this reconvened hearing, and he chose not to submit any additional evidence. In response the Tenant stated that he can see where this hearing is going and he should be allowed more time to provide additional evidence to dispute what was said in this hearing.

After careful consideration of the Tenant's request for adjournment I denied his request in accordance with the *Residential Tenancy Branch Rules of Procedure* rule 6.6.

The Landlords were given an opportunity to provide closing remarks to which they stated they had nothing further to add.

Analysis

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the

premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In considering the evidence before me, I favor the evidence of the Landlords, who stated they had reports of a bed bug issue from one apartment back in October 2010 and that they canvassed the other apartments to determine if any other tenants required treatment, over the evidence of the Tenant who stated he has been living with bed bugs for over two years, losing business because he has bed bugs crawling all over him, and the Landlords refuse to treat his apartment.

I favored the evidence of the Landlords over the Tenant, in part, because the Landlords' evidence was forthright and credible and included the pest control company name and the actual date of the treatment. The Landlords readily acknowledged that the rental unit had a mice and bed bug problem back in 2010. In my view the Landlords' willingness to admit the problem, considering the lack of evidence provided by the Tenant, when they could easily have stated there never was a mice or bed bug problem lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the

preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenant's explanation of why he did not make an effort to seek another remedy to the alleged bed bug problem to be improbable. Given that the Tenant is a professional businessman it is reasonable to conclude he would want to continue his business and therefore would seek a remedy on how to resolve a problem that may be negatively affecting his income. I find that the Tenant's explanation that he simply was waiting for the Landlord to resolve the problem to be improbable, not to mention does not meet the requirement under section 7 of the Act for mitigation. Rather, I find the Landlord's explanation that there was a bed bug presence back in October 2010 and it was treated by a professional pest control company and the Tenant refused the pest control company access to spray for the follow up spraying, to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find the Tenant has not provided sufficient evidence to meet the test for loss, as listed above, and I hereby dismiss his application for monetary compensation.

The Tenant has not been successful with his monetary claim; therefore I decline to award recovery of the filing fee.

Conclusion

The Applicant Tenant is the sole tenant of this rental unit as of April 6, 2011.

I HEREBY DISMISS the Tenant's application for monetary compensation.

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 05, 2011.

Residential Tenancy Branch