



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RP, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant's have requested compensation for damage or loss under the Act and an order that the landlord make repairs to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. Both parties provide affirmed testimony.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$850.00?

Must the landlord be Ordered to make repairs to the rental unit?

Background and Evidence

The tenancy commenced December 1, 2011; rent is \$850.00 per month, due on the first day of each month. The tenant stated she does not have a copy of the tenancy agreement; the landlord stated he had provided her with a copy. The landlord read from the agreement, which indicated that tenancy is a 1 year fixed term.

The tenant stated that the unit has been infested with mice; that they have trapped 19 mice since they took possession of the unit on December 1, 2011. The tenants purchased the mouse traps, as the landlord had not responded to at least 4 calls made, complaining of the problem. The tenant testified that one of the tenants from the other 2 adjoining units owned by the landlord removed a couch from the building and that it was infested with bed bugs. The tenant stated they are receiving bites.

The tenant threw out numerous belongings that had been covered with mouse excrement; including a bed which needs replacing. The tenant has claimed \$850.00 for the loss experienced as a result of having to dispose of personal items, food and laundry costs.

On December 27, 2011, the tenant wrote the landlord a letter which outlined her concerns; informing the landlord that food and belongings had to be thrown out, that

mouse droppings were all over her unit and that the lack of laundry facilities was making it very difficult for them to cope. The tenant asked the landlord to take steps to end the infestation.

The tenant stated that the walls of the home smell of mouse excrement, that the oven smells of mouse urine and that she is considering ending the tenancy. The tenant stated that mouse droppings are present in the electrical breaker box.

The landlord acknowledged the tenant had contacted him on one occasion in relation to the mouse problem; that he had offered the tenant a powdered poison, but the tenant turned that down for fear of safety to her children. The landlord has now placed mouse bait in neighbouring units and both parties agreed that no mice have been seen in the past few weeks.

The landlord stated he first received the December 27, 2011, letter when his spouse was served with Notice of this hearing on January 6, 2012.

The landlord agreed to immediately write the tenant a cheque for the cost of the mouse traps, in the sum of \$25.00. The landlord does not believe that the tenant is entitled to any compensation for loss of personal property or other costs claimed as a result of the infestation.

The landlord agreed that a professional, licenced Pest Control company will be immediately contacted and that an inspection of the unit will be completed.

Analysis

In relation to the tenancy agreement, section 13(3) requires that within 21 days of the start of the tenancy, the tenant be given a copy of the agreement. As the tenant has testified she does not have a copy, I Order the landlord to immediately supply a copy of the signed tenancy agreement to the tenant.

Section 32 of the Act provides, in part:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch policy suggests that the Landlord is responsible for ensuring that rental units are reasonably suitable for occupation given the nature and location of the property; which I find would include freedom from mice, other vermin and pests such as bed bugs.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony relative to contact made by the tenants to report the infestation. I have also considered the burden of proof, which falls to the tenants, as the applicant. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me; I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time. I have accepted the testimony that the tenants contacted the landlord on more than 1 occasion and find the lack of suitable response resulted in this application.

The landlord made an offer of powdered poison for the tenants to use in the unit. Pest control is not the responsibility of tenants and while the landlord did place poison in adjoining units, this did not have any effect until after many mice had been trapped and the unit experienced an infestation.

It is reasonable to accept that the trapping of 19 mice would qualify as a serious infestation. Both parties agreed that the mice have currently ceased entering the unit. However; it is not the responsibility of a tenant to ensure that the unit is secure from future infestation or that the tenants place bait or traps and remove dead mice. This is a responsibility that the landlord assumes, as required by section 32 of the Act. If this responsibility is not easily achieved by a landlord the landlord may choose to assign an agent such as a pest control company.

Therefore, pursuant to section 62(3) and 32 of the Act, I Order the landlord to do the following:

- Hire a licenced, professional Pest Control company to inspect the tenant's unit and the 2 adjoining units owned by the landlord for the presence of mice, bed bugs and any other pests;
- That the landlord immediately obtain a detailed, written report from the Pest Control company which outlines the outcome of the inspection for the 3 units, all treatment recommendations in any of the 3 units and, if required, the complete treatment plan, including recommended follow-up treatments;
- That the tenant immediately be given a copy of the Pest Control company report and any other report or invoice issued, as recommended treatments are completed;
- The landlord receive professional advice in relation to cleaning mouse excrement and to then have the rental unit cleaned to an acceptable standard, at the landlord's cost, in order to eliminate the presence of any mouse excrement and urine; and
- That the landlord investigate the odour reported by the tenants that they believe is caused by the presence of mice and that steps be taken to remediate any risk this may pose.

The parties may wish to utilize the services of the local Health Authority or City inspectors, in order to establish feedback on legislated and recommended standards.

I Order that all of the above steps be completed no later than February 10, 2012.

If the Orders I have made are not followed and completed by February 10, 2012, I find, pursuant to section 62(3) of the Act, that the tenant will have cause to end this tenancy as if it were a month-to-month tenancy.

The tenants may give written Notice on February 11, 2012, for the last day of February; 2012. If Notice is not given on February 11, 2012, ending the tenancy on February 29, 2012, the tenants may choose to give written Notice, as if this tenancy was a periodic tenancy, for any other date, if that Notice complies with section 45 of the Act:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

For example, Notice given in writing on February 11, may be effective on February 29, 2012. Any written Notice given after February 11, 2012, will be effective as provided by the Act; for example, written Notice given on February 12, 2012, would be effective on March 31, 2012.

The parties may also choose to mutually agree, in writing, to end the tenancy at any time.

If the tenant remains in the rental unit and my Orders are not followed, the tenant is at liberty to submit an application claiming damage or loss of value of the tenancy.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of any evidence of the items that the tenants claim were damaged, such as an inventory, photographs, receipts when items were originally purchased, or estimates for items claimed, I find that the tenant's monetary claim is for food and

damage is dismissed. The tenant did not provide a detailed calculation of the items claimed.

The landlord will immediately provide the tenants with a cheque in the sum of \$25.00 for the cost of mouse traps purchased by the tenants.

Conclusion

A number of Orders have been issued to the landlord, as set out in the analysis section of this decision. A failure to comply with my Orders will provide the tenant with the authority to submit written Notice ending the tenancy, as if the tenancy were a periodic term or, effective February 29, 2012.

The monetary claim is dismissed.

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: January 25, 2012.

Residential Tenancy Branch