



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC; RP; RR; FF

Introduction

This Hearing was convened in response to the Tenant's application for compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for an Order that the Landlord make repairs to the rental unit; for a reduction in rent for repairs, services or facilities agreed upon by not provided; and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing and provided affirmed testimony.

Preliminary Matters

The Tenant named the building manager of the strata building where the rental unit is located as "Landlord" on her Application. The owners/landlords of the rental unit were not named in the Tenant's application. RM signed into the Hearing and testified that his company is the management company for the strata building where the rental unit is situated and that his company is also agent for the owner/landlords. He stated that he was provided with the Tenant's Notice of Hearing documents and copies of her documentary evidence and was prepared to proceed with the Hearing as agent for the owners/landlords. Therefore, I have amended the Tenant's application to reflect the appropriate party as the "Landlord".

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order in compensation for damage or loss under the Act?
- Is the Tenant entitled to a rent reduction?
- Should the Landlord be ordered to make repairs to the rental unit?

Background and Evidence

This tenancy began on April 15, 2011. Monthly rent is \$725.00, due on the first day of

each month. The Tenant paid a security deposit of \$362.50 at the beginning of the tenancy.

The Tenant gave the following testimony

The Tenant testified that she is moving out of the rental unit in February, 2012.

The Tenant testified that she spotted silverfish in the rental unit on September 20, 2011, and alerted the building manager. She stated that on September 24, 2011, the owners provided her with \$50.00 to compensate her for the cost of bug spray and additional laundry costs. She stated that on or about October 7, 2011, the property manager was notified that the bugs were still there. She stated that the building manager arranged for an exterminator to spray the rental unit and a neighbouring suite on October 13, 2011.

The Tenant testified that she, her fiancé, and their baby had to be out of the rental unit for 8 hours while the extermination was taking place. She stated that her fiancé had to take the day off work to drive her and their baby around because she does not drive. The Tenant seeks compensation in the amount of **\$150.00** for her fiancé's lost wages for 8 hours.

The Tenant testified that in early to mid November, she contacted the property manager again and told him that more bugs were found in her rental unit as well as 3 others in the building. The Tenant testified that the pest control people came again on November 17, 2011, with less than 42 hours notice. She stated that this time only the bathroom was treated because she and her baby could not leave the rental unit again for a whole day and could only leave for 4 hours.

The Tenant testified that on December 2, 2011, she emailed the building manager again because there were more silverfish than ever in her rental unit. The pest control people attended again on December 12, 2011, and she and her baby had to leave the rental unit for 5 hours.

The Tenant seeks compensation in the amount of **\$150.00** because she and her infant, who is nursing, had to be out of their home for a total of 17 hours while the rental unit was being exterminated.

The Tenant testified that she discovered from the pest control company that there was an ongoing problem with moisture and silverfish in the building, due to improper maintenance in an apartment below hers.

The Tenant testified that the silverfish are still not eliminated and that she is still finding about 5 live silverfish every day. She stated that she is a very clean person and that

she is repelled by the silverfish. The Tenant testified that there are silverfish crawling on the walls behind the headboard on her bed and on the living room floor where her baby is supposed to be able to play. She seeks compensation in the amount of **\$3,625.00** (the equivalent of all of the rent paid from September, 2011 to and including January, 2012) for "unacceptable living conditions".

The Tenant testified that she had to do an additional 90 loads of laundry above what the \$50.00 initial compensation paid for. She stated that she kept track of all the loads of laundry she did over the period of the infestation. She seeks compensation in the amount of **\$225.00** for all of the laundry that she has had to do because of the silverfish infestation (90 loads @\$2.50 per load), plus cab fare in the amount of **\$30.00**.

The Tenant testified that she has caused no damage to the rental unit and so she seeks a monetary award in the amount of **\$362.50** (return of her security deposit). The Tenant testified that she will need that money in order to move out of the rental unit.

The Landlord's agent gave the following testimony

The Landlord's agent testified that the rental property has used the pest control company for 15 years, under contract, and that they regularly inspect the common property monthly for pests. The Landlord's agent testified that there has been no moisture problem in the apartment below the Tenant's and that the exterminator must have been given false information.

The Landlord's agent testified that he has done everything reasonable to get rid of the silverfish. He stated that his company has been the management company for the rental property since 1983. He stated that a report from the pest control company confirms that there has been no widespread silverfish activity reported in any of the suites in the rental property for the 12 months prior to October, 2011

He submitted that the Tenant may bear some responsibility for the continuing silverfish infestation because she did not fully prepare her suite for the November 17th treatment and therefore the full effect of the treatment may have been compromised. He stated that two of the other three apartments were also inadequately prepared for the treatment.

The Landlord's agent testified that after the December 12th treatment, the pest control company suggested that the cracks in the walls and the plumbing in the affected adjoining suites should be caulked to prevent the silverfish from migrating from one suite to the next. He stated that the handyman went to the Tenant's suite to repair/fill

any cracks around hot water pipes and electrical conduits, but the Tenant told him to wait until she moved out.

The Landlord's agent submitted that silverfish are annoying, but are not a health hazard. He acknowledged that the Tenant may have had to do some additional laundry, but that the Tenant would have had to do some laundry anyway and submitted that the Landlord should not have to pay for all 90 loads.

The Tenant gave the following reply

The Tenant testified that on December 22, 2011, she spoke with the handyman who was going to fill in the cracks in her suite. She stated that the handyman was sighing about all of the work that had to be done to fill in all the cracks and that it was his suggestion that it could wait until the Tenants moved. She testified that she agreed that it could wait, but did not prevent him from doing it.

Analysis

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and to make it suitable for occupation by a tenant.

Section 7(1) of the Act provides that if a landlord does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord must compensate the tenant for the damage or loss which results.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Tenant's claim for damage or loss under the Act and therefore the Tenant has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred **due to the actions or neglect of the Landlord in violation of the Act,**

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The original source of a silverfish infestation is almost impossible to determine. The Tenant submitted that there was a moisture problem in another suite in the building which went unattended for a time and may have contributed to the silverfish problem. I find that the Tenant has submitted insufficient evidence to prove, on a balance of probabilities, that this was the cause of the silverfish infestation, or that the Landlord was aware of any silverfish infestation prior to her discovery of them on September 20, 2011.

Based on the testimony of both parties, I find that the Landlord's agent acted quickly and reasonably when he was alerted to the silverfish infestation in the rental unit. I do not find that the Landlord was neglectful.

Generally speaking, a landlord bears the cost of eliminating pests and a tenant is responsible for managing their own possessions as part of treating an infestation. Therefore, the Tenant's application for compensation for the cost of doing additional laundry is dismissed. I find that the Tenant has failed to prove that damage or loss has occurred due to the actions or neglect of the Landlord in violation of the Act, and therefore her application for the remaining compensation claimed is dismissed.

The Landlord has paid for three treatments in the three months following the initial sighting of the silverfish. The Tenant did not thoroughly prepare her suite for the second treatment and did not insist on the handyman filling the holes where the professionals indicated the silverfish may be gaining access. Therefore, I am not satisfied that the Landlord is responsible for any silverfish problem that may remain in the rental unit. Nor am I satisfied the Landlord has not made reasonable efforts to treat the property based upon the evidence before me. Therefore, I do not authorize the Tenant to reduce future rent.

As explained to the Tenant during the Hearing, a security deposit must be dealt with in accordance with the provisions of Sections 38 and 39 of the Act. Therefore, her application that the Landlord return the security deposit to her prior to the end of the tenancy is dismissed.

The Tenant has not been successful in her application and I find that she is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application 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 19, 2012.

Residential Tenancy Branch