Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNR, MNDC

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied for more time to cancel a Notice ending tenancy, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; compensation for the cost of emergency repairs and for damage and loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The agent for the tenant testified that he is the tenant's boyfriend and was acting as agent as the tenant had been in an accident and was at the hospital. The agent stated he was prepared to proceed on behalf of the tenant.

The tenant submitted that initially the applied requesting the cost of emergency repairs and compensation for damage or loss. The landlord confirmed receipt of the application that was made on February 1, 2012.

The landlord confirmed receipt of an amended application that was sent via registered mail post marked on February 22, 2012, which was amended to include a request to cancel a 10 Day Notice issued for Unpaid Rent.

As I was unable to make a determination on the amendment dates during the hearing I heard from the parties on all matters included in the amended application. I then considered the information contained in the Residential Tenancy Branch file that set out the time-frame of the tenant's applications, made via a Service BC office.

I determined that the tenant initially made an application on February 1, 2010, and that on February 13, 2012, rather than amending her application to include a request to cancel the Notice ending tenancy issued on February 10, 2012, the tenant submitted another application. The original application was eventually amended to include the request made on the tenant's 2nd application. I have determined that the tenant did

submit an application requesting cancellation of the Notice ending tenancy and that the landlord did receive proper notice of the amendment, sent to him via registered mail on February 22, 2012, which is deemed served on February 27, 2012.

Therefore, I find the tenant did apply to cancel the Notice ending tenancy within the required 5 day time-frame; by February 15, 2012; and that the landlord was sufficiently served and had adequate notice of the tenant's intention.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 10, 2012, be cancelled?

Is the tenant entitled to compensation in the sum of $1,304.00 for damage and loss and the cost of emergency repairs?

Background and Evidence

The tenancy commenced on August 1, 2011, rent is $875.00 due on the first day of each month. There is no written tenancy agreement.

The tenant confirmed receipt of a Ten (10) Day Notice to End Tenancy for non-payment of Rent, which had an effective date of February 23, 2012, which was served by posting to the door. The tenant received the Notice the day it was posted; February 10, 2012.

The Notice indicated that the Notice would be automatically cancelled if the landlord received $875.00 February, 2012, rent within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant had already applied requesting compensation for emergency repairs and compensation for damage and loss; her application was then amended within the required time-frame, to include a request to cancel the Notice.

The tenant has claimed compensation as follows:

- $784.00 bed bug treatment cost;
- $547.00 daycare costs; and
- $9.00 for dry-cleaning.

The tenant did not pay February, 2012 rent owed as she believed she had a verbal agreement with the landlord to deduct $180.00 rent due for January and February, 2012; plus they had deducted the cost of fumigating for bed bugs. The landlord testified that he did not recall making more than agreement for a deduction of $90.00 from rent owed January 1, 2012; for disruptions caused by a sewage leak in the basement and the resulting repairs.

The tenant supplied a copy of a November 14, 2011, letter sent to the landlord about an insect problem in the unit. She asked for immediate response; that the landlord have a specialist attend to inspect and take action.

The tenant supplied copies of 2 text messages sent by the landlord; one on January 13, 2012, which indicated that the landlord did not know what to say about the tenant's child being bitten; that he had bug people there and confirmed there were no bed bugs, and that the tenant should have her furniture steam cleaned. The 2nd text message received by the tenant, dated January 17, 2012, indicated that the landlord did not wish to keep going around the issue with her, that he had done what he could and what he was willing to do and that it had been confirmed there were no bed bugs.

The landlord stated that he did not recall sending those text messages and pointed out that they showed only the tenant's email address and her telephone number; the tenant responded that the only way to print them via the Telus site showed just the tenant's phone number.

The tenant supplied a copy of a January 31, 2012, letter written by the Orkin Pest control witness, which indicated that in the late summer of 2011 he had been attempting to service the rental unit and when he first inspected the home in the fall of 2011 he did not find bugs; this was reported to the landlord. Pest strips were immediately put out in the unit and bed bug activity was found. It was then decided that the unit should be treated, which did not occur until January 30, 2012.

The witness testified that he spoke to the landlord several weeks ago and that the landlord stated he wanted to obtain a copy of the invoice. The cost for treatment, paid by the tenant, was $700.00 plus $84.00 in taxes. The pest control company has not been asked by the landlord to complete a follow-up inspection; although that is recommended as a method to ensure that bugs have not hatched.

The tenant supplied a February 9, 2012; letter from her daycare provider, who cares for the tenant's 4 year old. The note indicated that after-hours daycare costs have totalled $547.00 since December, 2011 as a result of the child's fear of sleeping in his own bed, due to bed bug bites. The care provider stated she has seen bites on the child since late August.

The landlord stated that he and the tenant had been back and forth over the issue of bugs in the unit and that the tenant arranged the treatment without his knowledge. In the fall of 2011, sometime around September, the landlord obtained a 2nd opinion from another pest control company; the name of the company could not be recalled. This company representative said there were no bed bugs. The landlord stated the tenant had then told the landlord not to worry about the issue. Once the landlord received the November 14, 2011letter he and the tenant again went back and forth about the issue of bed bugs.

The tenant supplied a copy of a February 8, 2012, letter from her mother which supported the tenants belief that the child was being bitten by bed bugs and that she had witnessed conversations between the tenant and landlord where the landlord refused to treat for bugs as he did not want to spend money and believed the tenant was fabricating the insect problem.

The landlord stated that he has a hearing scheduled and that he has requested an Order of possession as February and March, 2012, rent have not been paid.

The tenant claimed costs for dry-cleaning in the sum of $9.00.

Analysis

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.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord

I find that the tenant received the Notice to End Tenancy on February 10, 2012 and that she applied to cancel the Notice within the required 5 day time frame. The tenant did this by first submitting a new application; believing it would constitute an amendment of her initial application submitted on February 1, 2012, requesting compensation for costs related to bed bugs.

The tenant agreed that February rent has not been paid. First; I must consider whether the tenant had the right, as provided by section 33 of the Act, to make a deduction for costs for bed bug treatment and if she has incurred costs that constitute emergency repair equivalent to rent owed.

Section 33 of the Act provides:

> ***33*** *(1) In this section,* ***"emergency repairs"*** *means repairs that are*
>
> *(a) urgent,*
> ***(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and***
> *(c) made for the purpose of repairing*
>
> *(i) major leaks in pipes or the roof,*
> *(ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
> *(iii) the primary heating system,*
> *(iv) damaged or defective locks that give access to a rental unit,*
> *(v) the electrical systems, or*
> ***(vi) in prescribed circumstances, a rental unit or residential property.***

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;
(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.
(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and
(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
(c) the amounts represent more than a reasonable cost for the repairs;
(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount

(Emphasis added)

I have considered the meaning of “repair” provided in *Black’s Law Dictionary, sixth edition*:

> *“To mend, remade, restore, renovate. To restore to a sound or good state after decay, injury, dilapidation or partial destruction...”*

Based on the definition I have determined that bed bug treatments do not fall within the meaning of emergency repair. This does not mean that there was not a breach of the landlord’s duty to maintain the home to the standard provided by section 32 of the Act; but in the absence of a determination that the treatment was an emergency, the requirements of section 33 of the Act, were not applicable.

Therefore, I find that the tenant was not entitled to deduct the cost of pest control completed on January 30, 2012, from rent owed as part of an emergency repair under section 33 of the Act. However, I do find that the tenant incurred the cost, in the sum of $784.00; as confirmed by the witness who completed the treatment and that the landlord had neglected his duty to maintain the home as provided by section 32 of the Act.

Section 32 of the Act provides:

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

There was no evidence before me of any steps taken by the landlord to address the bug issue discovered in the fall of 2011 after bed bugs were found in the unit. The landlord could not recall the name of the company he claims to have used, or the date he had the unit inspected after he received the November 14, 2011, letter of complaint from the tenant.

From the evidence before me, on the balance of probabilities, I find that the landlord was aware of the presence of bed bugs in the rental unit; I have rejected the landlord's submissions that he could not recall when he had a pest control company attend the unit and that the tenant kept changing her mind about the presence of bugs. I found this lack of recall difficult to understand and that the tenant's November 14, 2011, letter clearly indicated the tenant was not indecisive, but requesting the landlord's assistance. The November 14, 2011, letter to the landlord and the 2 text messages he responded to in January, 2012, indicated that the tenant was indeed upset over the presence of bed bugs; yet the tenant was left to call pest control and have the unit treated on her own volition.

Therefore, I find that the tenant is entitled to compensation for damage or loss in the sum of $784.00; the amount verified by the pest control company witness, who confirmed the tenant paid for this service. The witness testimony amounted to verification of the cost incurred, which I find was necessary as a result of a failure on the landlord's part to comply with section 32 of the Act.

I have considered the letters submitted by the tenant's mother and her child care provider in relation to the bites allegedly caused by bed bugs and the resulting fear experienced and the need for increased after-hour care at a cost of $547.00. I find, on the balance of probabilities that the landlord's failure to adequately respond to the reports of bed bugs resulted in the tenant incurring additional child care costs and that, in the absence of more than a global amount provided as evidence, that the tenant is entitle to nominal compensation in the sum of $100.00.

There was no verification of the dry-cleaning costs claimed; that portion of the application is dismissed.

Therefore, the tenant is entitled to compensation for damage or loss in the sum of $884.00.

Section 72 of the Act provides:

> ***72*** *(1) The director may order payment or repayment of a fee under section 59 (2) (c)* [starting proceedings] *or 79 (3) (b)* [application for review of director's decision] *by one party to a dispute resolution proceeding to another party or to the director.*
>
> *(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*
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> *(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and*
> *(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.*

The tenant confirmed February, 2012 rent had not been paid as a result of the bed bug costs; which I have determined do not qualify as emergency repairs, but as compensation for damage or loss.

Therefore, as the tenant has not paid February 2012, rent owed; I find that the amount owed by the landlord to the tenant, $884.00, is set off against February, 2010 rent owed in the sum of $875.00. The landlord owes the tenant $34.00.

As the cost of the bed bug treatment was not found to be an emergency repair I find that the failure of the tenant to pay February 2012, rent owed constituted a breach of the Act and that the Notice ending tenancy issued on February 10, 2012, is of full force and effect. As the landlord requested an Order of possession and the tenant's application to cancel the Notice ending tenancy is dismissed, I find that the landlord is entitled to an Order of possession effective 2 days after service to the tenant.

Conclusion

The tenant is entitled to compensation in the sum of $784.00 for bed bug treatments plus a nominal amount of $100.00 for child care costs as compensation for damage or loss under the Act.

The bed bug treatments did not constitute emergency repair.

The tenant's application to cancel the Notice ending tenancy for unpaid rent is dismissed. The landlord requested an order of possession.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The amount owed to the tenant is set off against the rent owed to the landlord for February 2012, in the sum $850.00. The balance owed to the tenant is $34.00.

Based on these determinations I grant the tenant a monetary Order for $34.00**.** In the event that the landlord does not comply with this Order, it may be served on the

landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

The claim for dry-cleaning costs 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: March 05, 2012.

Residential Tenancy Branch