



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF, O

Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, regulations or tenancy agreement, for emergency repairs, to recover the filing fee for this proceeding and for other considerations.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on February 20, 2012. Based on the evidence of the Tenant and the Landlord, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Landlord said the Tenant S.A. was not a tenant as she was not on the tenancy agreement. The Tenant agreed S.A. was a part time occupant and she would give witness testimony when called on.

Issues(s) to be Decided

1. Is there loss or damage to the Tenant and if so how much?
2. Are there emergency repairs and if so how much did the repairs cost?
3. Is the Tenant entitled to monetary compensation and if so how much?
4. What other considerations are there?

Background and Evidence

The Tenant said he informed the Landlord that there were bed bugs in the rental unit on September 6, 2011. The Tenant continued to say they were moving out of the unit at the end of September, 2011, but to make the unit habitable they called the exterminators in to fumigate the rental unit. The Tenant said on September 7, 2011 the exterminator treated the rental unit at a cost of \$308.00 which the Tenant paid. The Tenant provided a copy of the exterminator's bill and a note that the Tenant wrote about the bed bugs which the exterminator signed. The note says the rental unit has a bedbug infestation which the inspector believed came from other parts of the building.

The Tenant also said when he talked to the Landlord about the bedbugs the Landlord said it was the Tenant's problem and he was not going to do anything. The Tenant said the exterminator was not at the hearing to give testimony because they were not aware that the exterminator could be called as a witness. Tenant said they moved out of the rental unit at the end of September, 2011 and now would like to recover the cost of the fumigation treatment of \$308.00 and the filing fee of \$50.00.

The Landlord said the bed bug problem was not created by the Landlord, but by the Tenant. The Landlord continued to say there were no bedbugs in the unit in April, 2011 when they moved in so the Tenants must have brought the bed bugs in to the rental unit. The Landlord said it was not his responsibility to correct the bedbug problem if he did not create the problem. The Landlord also said he included three letters which he wrote for other tenants in the building stating they did not have a bed bug problem. The letters had the same text but were signed by three different people. The Landlord continued to say that there is no bed bug problem in the building and he has not treated any rooms for bedbugs.

The Tenant called a witness S.A. who said she normally spent 2 nights at the rental unit per week and she had to be taken to hospital and treated for bedbug bites. She said she reacts to many things and as a result the bedbug bites were worse for her than for the Tenant. She said the exterminator told them there were bedbugs in the unit and the bugs were in the hallways of the building as well. The Witness continued to say the exterminator did not go into any other rental units because the Landlord would have to authorize entry for the exterminator to go into any other unit. The Landlord said the witness S.A. was not a tenant as she was not on the tenancy agreement.

On questioning both the Landlord and Tenant said they had written the notes that were signed by the exterminator and the other tenants. Neither the Landlord nor the Tenant had any corroborating evidence or witness testimony that the notes or letters were actually signed by the exterminator or the other tenants. Both the Landlord and the Tenant testified that the people agreed to what was in the notes and letters and signed them.

Analysis

In order for an applicant to be successful with a monetary claim the applicant must prove a loss actually existed, the loss or damage was solely because of actions or neglect of the respondent in violation of the Act or the agreement, the loss or damage must be verified and there must be proof that the applicant took steps to mitigate or minimize the loss or damage.

In this case the Tenant has established a loss has occurred. The Tenant had loss of \$308.00 which was the cost of the fumigation treatment. What the Tenant has not proved is that the loss is solely the result of the Landlord's actions or neglect in violation of the Act. I do not accept the note provide by the Tenant which he says was signed by the exterminator. It was not written by the exterminator and the signature is illegible, so it does not met the burden of proof. To verify a bug infestation an applicant is required to provide evidence that is substantial enough to meet the burden of proof. This may be a letter from the exterminator on company letterhead or to have the exterminator give witness testimony at the hearing.

In addition the Witness S.A. said she reacts to many things and she did not provide any corroborating evidence from the hospital confirming the bedbug diagnoses. Consequently it is unclear if her reaction was from bedbugs or from some other source. As a result I do not accept the Witnesses conclusions that her hospitalization was solely a result of bedbugs in the rental unit.

As a result the Tenant is relying on his word to proof there were bedbugs in the rental unit. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Tenant has not provided substantial enough evidence to meet the burden of proof. Consequently, I find the Tenant has not established grounds to support the monetary claim as the Tenant has not proven there were bedbugs in the unit and that the Landlord was negligent. The Tenant's application is dismissed without leave to reapply.

As the Tenant has been unsuccessful in this matter I order the Tenant to bear the \$50.00 cost of this application which he has already paid.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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*.

Residential Tenancy Branch