



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, OLC, ERP, RP, PSF, FF

Introduction

This was a review hearing held as a result of the tenant's application for review consideration made on April 10, 2012.

The tenant originally applied for dispute resolution and a hearing was held on March 30, 2012, resulting in a decision issued on the same date, which found the tenant was entitled to compensation in the sum of \$868.75. The tenant had applied requesting compensation in the sum of \$25,000.00.

On April 17, 2012, a review consideration decision was issued which ordered that the decision made on March 30, 2012, be suspended until the review hearing was held and a review hearing decision issued.

Both parties were present at the review 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 included evidence.

Preliminary Matters

At the start of the review hearing service of evidence was established. I established that the tenant had served the landlord with 7 pages of evidence, either for reference during the prior hearing, or since the review decision issued on March 30, 2012.

The landlord did not make any written submission.

As the tenancy has ended there is no requirement that any order for repair, emergency repairs.

Issues to be Decided

Is the tenant entitled to compensation for damage or loss under the Act in the sum of \$25,000.00?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy in the unit under dispute commenced on December 10, 2011; it was a 1 year fixed-term. The tenant had lived in another unit owned by the landlord but moved into the dispute address after a break-in occurred and bed bugs were discovered.

Rent was \$695.00 per month. There are 25 units in the building.

The tenancy ended on May 1, 2012, by mutual agreement.

The tenant has made the following claim:

	Original Claim	Current Claim
Time lost at work for move	360.00	360.00
Packing supplies	150.00	150.00
Movers	500.00	500.00
Damage deposit at new rental	400.00	400.00
Compensation for landlord refusal to heat treat entire building	2,500.00	0
2 night's accommodation	400.00	0
Sofa	675.00	675.00
Bed frame	900.00	900.00
Love seat	500.00	500.00
Other personal property	7,565.00	0
Loss of income 160 hours @ \$18.00/hour for past treatments	72,000.00	7,200.00
Anticipated loss of future income for treatments 24 hours @ \$45.00 per hour	1,080.00	1,080.00
Treatment preparation time:	540.00	540.00
• 30 hours @ \$18.00/hour		
• 6 hours @ 18.00 per hour for future preparation time	108.00	108.00
Steam treat 2 vehicles	300.00	300.00
Loss of quiet enjoyment November 2011 to February 2012	1,430.00	1,430.00
Loss of quiet enjoyment April 2012, to June, 2012	1043.00	1043.00
	25,801.00	15,336.00

The amounts claimed were adjusted during the review hearing; the tenant eliminated some items; the chart reflects those adjustments made. The tenant stated that he calculated the loss of quiet enjoyment based on a loss equivalent to \$347.00 per month from April to June, 2012.

The parties confirmed that the tenant has cashed a cheque issued in the sum of \$918.75, as previously Ordered paid to the tenant as part of the March 30, 2012, decision. This cheque included \$868.75 in compensation and \$50.00 of a \$100.00 filing fee paid by the tenant.

The tenant did not dispute the fact that the landlord had previously provided compensation in the sum equivalent to one-half of March rent owed; \$347.50.

The tenant has requested compensation as the result of a bed bug infestation that resulted in a loss, due to the landlord's failure to comply with the Act, by properly responding to the infestation.

The parties did not dispute the fact that as early as November, 2011, the tenant had reported bed bugs in his previous rental unit. Within 1 week of the initial report the landlord had a professional pest control company treat the unit; followed by a 2nd treatment.

On December 2, 2011, the tenant again discovered bed bugs in his previous unit, which, combined with the break-in, resulted in the move to unit 208. Bed bugs were discovered in unit 208 and it is not disputed that treatment occurred once in December, 2011, and twice in February, 2012.

With the landlord's permission, the tenant approached the pest control company and obtained a letter dated March 18, 2012, a copy of which was supplied as evidence. The manager of the pest control company confirmed treatment had occurred in unit 107 in November and December, 2011; and the 3 treatments, to date, that had occurred in unit 208. The pest services manager reported that management of the building had refused to engage the company to locate the source of the infestation; despite recommendations made since the first treatment in November, 2011, that the source of the infestation should be located.

There was no dispute that during this period of time the landlord had refused to engage a pest control service in an attempt to locate the source of the infestation and no dispute that the pest control company hired by the landlord had recommended the source of the infestation be investigated.

The landlord submitted that they felt the issue had been settled as a result of their March 12, 2012, letter in which the tenant was provided with compensation in the sum equivalent to 50% of rent due for March. A copy of the landlord's letter was supplied as evidence. The letter indicated the landlord was attempting to rectify the bed bug problems and they would not compensate the tenant for replacement of his couch.

The tenant stated he had been constantly contacting the landlord to report problems with bed bugs in his unit. On March 6, 2012, the tenant asked the landlord to treat his unit again. On March 14, 2012, the tenant wrote the landlord a letter indicating he would charge the landlord for loss of income in the sum of \$360.00 for each day his suite remained untreated.

On February 10, 2012, the source of the infestation, found in unit 209, was discovered; a 2nd pest control company was then consulted for an opinion. Unit 209 was treated twice in February, 2012; this unit was above the tenant's original suite and next to 208.

From March 15, 2012, onward, bed bug inspections, treatments and follow-up treatments, including heat treatments, were completed. On March 15, 2012, the landlord had a canine service inspect all of the units. After this date the landlord followed all recommendations made by the pest control company.

The tenant has claimed the loss of income as a result of the landlord's failure to properly respond to the infestation when the landlord first became aware of problems in October,

2011. The landlord's refusal to follow the recommendation made, as early as November, 2011, that the source of the infestation be investigated, resulted in the tenant's belongings becoming infested. The tenant lived next to what was discovered to be the source of the infestation, which impacted the tenant and resulted in a loss of value of the tenancy and loss of income.

The tenant is a carpenter, who has tools and work clothes that he must bring into the unit each evening; the tenant could not be assured that his belongings would not result in an infestation on a work site.

The tenant supplied a copy of a letter issued on March 28, 2012, from an individual who declared the tenant had been working on his home during the month of March, 2012. On March 14, 2012, the tenant informed his employer that he was having a problem with bed bugs in his home. The employer then asked the tenant to cease working on his property until the problem could be resolved. On March 28, 2012; the tenant returned to work for this individual.

The tenant issued the landlord 2 invoices; each dated March 23, 2012, for the loss of income totalling \$8,064.00 for 160 hours at \$45.00 per hour and additional compensation from March 14, 2012, to March 27, 2012 in the sum of \$4,838.40, as a result of loss of income. Both invoices included tax in the sum of \$864.00 and \$518.00 respectively. The total amount invoiced was \$12,902.40.

Several days prior to vacating the unit the pest control company had the canine check the unit; the tenant stated bed bugs were again located on some of the furniture. The tenant disposed his bed frame and left a sofa in the unit for the landlord to remove. The tenant has claimed costs for the replacement of a sofa, love seat and the bed frame. No verification of the cost claimed was supplied. There was no dispute that a sofa was left in the unit; the landlord did not know if the tenant had thrown out the bed frame.

The tenant cleaned his vehicle, no bed bugs were located.

In mid-April the tenant decided he must relocate. The tenant has claimed moving costs; verification of costs was not supplied, however; the tenant submitted that common sense dictates a move would result in costs to the tenant.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenant decided to end the tenancy and the parties mutually agreed to end the fixed-term. By the time the tenancy ended the landlord was fully adhering to a treatment program and following the advice of a professional pest control service. At this point I find that the tenant's choice to relocate should not result in costs to the landlord. There was no evidence before me that by April 2012, the landlord was not fully complying with treatment recommendations.

Further, the tenant provided no verification of the costs claimed. While it is not unreasonable to accept the tenant incurred costs, the tenant is required to verify the amounts claimed. Therefore, the costs related to moving and obtaining a new unit and accommodation are dismissed.

There was no evidence before me of a loss suffered by the tenant in relation to the portion of his claim for the landlord's refusal to heat treat the entire building. There was no evidence before me of any recommendation for heat treatment that the landlord ignored. Further, there was no evidence before me that the tenant incurred this cost, resulting in a loss to the tenant. Therefore, I find that the portion of the claim is dismissed.

In relation to the belongings the tenant submits were rendered unusable due to bed bugs, there is no dispute that a sofa was left in the rental unit at the end of the tenancy. The tenant did not provide any information on the age of these items, receipts supporting the original purchase costs, or any verification of the loss suffered as a result of replacing the items. In the absence of evidence demonstrating the age of the belongings and what, if any value remained, after depreciation, combined with the absence of verification of the amounts claimed, I find that this portion of the application is dismissed.

Generally, a landlord is responsible for arranging for and paying for a pest exterminator and the tenant is responsible for preparing the unit for treatment. This is not an unreasonable expectation. The tenant has claimed compensation for the time he has spent preparing his unit for repeated treatments, which is something I find any tenant must do in order to participate in the process of eliminating bed bugs.

However, I find in this case, that it is likely the tenant had to endure additional treatments as a result of the landlord's failure to follow the advice of professional pest control company. As early as November 2011, the source of the infestation should have been investigated. We will not know what the result would have been had the landlord followed the initial advice of the company hired to treat for bed bugs, but I find, on the balance of probabilities, the landlord's failure to respond to the need to locate the source of the bed bugs within a reasonable period of time, had an adverse affect on the tenant.

I do not find that the tenant suffered a loss of income as a result of preparing for bed bug treatments. The tenant has provided no verification of the amount he earns on an hourly basis, no proof of loss of employment during the time he was preparing the unit

for treatment, no evidence that he prepared the unit during the day rather than the evenings or any other evidence of the loss he claims. The tenant provided no evidence of efforts made to keep his belongings elsewhere, or evidence that his clothing was infested, resulting in him carrying bed bugs to a work site. Therefore, in the absence of any verification of a loss of income while preparing for treatment, I find that this portion of the claim is dismissed.

I do accept that the tenant suffered a loss of quiet enjoyment as a direct result of the landlord's failure to adequately respond to the bed bug reports made as early as October, 2011. The landlord confirmed that he did not follow the advice of the professional he had hired and that in November and December, 2011 and in February, 2012, he neglected to investigate the source of the bed bug infestation.

I find that the failure to follow the recommendation of the professional pest control company amounted to negligence on the part of the landlord and a breach of section 32 of the Act, which 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.

Treating a unit for bed bugs is a requirement that any reasonable person would accept as necessary, given the provision of section 32 of the Act and the recommendation of a professional pest control company. When the landlord ignored the need to locate the source of the bed bugs, I find, on the balance of probabilities, that the tenant suffered a loss of quiet enjoyment between November 2011 and March, 2012, equivalent to the sum of \$347.00 per month, totalling \$1,388.00.

There is no dispute that effective mid-March, the landlord was following the advice of the professional pest control company; canine services were used, all units were inspected, follow-up treatments were made and heat treatments were provided. Therefore, I find that from April 1, 2012, onward the tenant did not suffer any loss and dismiss the claim for loss of quiet enjoyment from April onward. The landlord was taking the required steps and could not be expected to do any more than that.

The claim for loss of income in relation to time lost from work is dismissed. The tenant disclosed to his employer that he had been dealing with a bed bug problem. The tenant did not find any bed bugs in his work truck and provided no evidence that he was transporting bed bugs to work sites. The tenant did not provide evidence of any effort to have the landlord provide a secure storage facility for his tools, nor did he supply evidence that he had approached the landlord in relation to the loss of income prior to issuing the invoices on March 23, 2012. By this time the landlord was fully and properly responding to the bed bug problem.

The tenant's vehicle did not have a bed bug infestation; no verification of costs claimed was supplied. Therefore, I find that this portion of the claim is dismissed.

The claim for future loss is dismissed. I have considered the claim submitted based on the period of time the tenant remained in the rental unit.

The tenant's application had some merit and has been previously given \$50.00 of his \$100.00 filing fee; I decline any additional amount.

The tenant has received \$868.75 in compensation, as ordered on March 30, 2012. Therefore, as the tenant is entitled to a total of \$1,388.00, I find a balance owed in the sum of \$519.25. This balance owed is set off by the \$347.00 the landlord provided as compensation to the tenant in March, 2012; therefore, I find that the balance owed to the tenant is \$172.25.

	Original Claim	Current Claim	Accepted
Time lost at work for move	360.00	360.00	0
Packing supplies	150.00	150.00	0
Movers	500.00	500.00	0
Damage deposit at new rental	400.00	400.00	0
Compensation for landlord refusal to heat treat entire building	2,500.00	0	0
2 night's accommodation	400.00	0	0
Sofa	675.00	675.00	0
Bed frame	900.00	900.00	0
Love seat	500.00	500.00	0
Other personal property	7,565.00	0	0
Loss of income 160 hours @ \$18.00/hour for past treatments	72,000.00	7,200.00	0
Anticipated loss of future income for treatments 24 hours @ \$45.00 per hour	1,080.00	1,080.00	0
Treatment preparation time:	540.00	540.00	0
• 30 hours @ \$18.00/hour			
• 6 hours @ 18.00 per hour for future preparation time	108.00	108.00	0
Steam treat 2 vehicles	300.00	300.00	0
Loss of quiet enjoyment November 2011 to February 2012	1,430.00	1,430.00	1,388.00
Loss of quiet enjoyment April 2012, to June, 2012	1043.00	1043.00	0
	25,801.00	15,336.00	1,388.00
Less previously provided compensation \$868.75			519.25
Less compensation given in March 2012 \$347.00			172.25

Therefore, I find that the decision issued on March 30, 2012, is varied, increasing the compensation due to the tenant. A monetary Order has been issued taking into account the additional compensation, less amounts previously given to the tenant by the landlord.

Conclusion

The tenant is entitled to compensation in the sum of \$1,388.00. This sum is reduced by the amount previously paid by the landlord totalling \$868.75 and by the rent reduction given in March, 2012, in the sum of \$347.00.

Based on these determinations I grant the tenant a monetary Order for \$175.25. 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 balance of the tenant's 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: May 29, 2012.

Residential Tenancy Branch