



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, MNDC

Introduction

This hearing was scheduled to deal with a tenant's application for repair orders, emergency repair orders; and, monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant stated that he did not receive the landlord's evidence package. The landlord stated that it was placed between the door and the door frame of the rental unit on August 9, 2012. The landlord was certain the tenants received it because some of the same documents were returned to the landlord by the tenants.

When a party is required to serve documents upon the other party, the party serving the documents must use a method permissible under the Act. Section 88 provides that documents may be attached to a tenant's door or left in a mailbox or mail slot for the rental unit, among other permissible ways. Positioning the documents between the door and door frame is not a permissible method of service. Since the landlord did not meet its burden to serve documents in a manner that complies with the Act and the tenants denied receiving the documents I informed the parties that the content of relevant documents may be submitted verbally during the hearing.

It was brought to my attention that the tenancy has ended and the tenants have been served with an Order of Possession effective the date of the hearing. As the tenancy has come to an end I found it unnecessary to further consider issuing any repair orders against the landlord. The parties were informed that the only remaining issue to hear was the tenant's monetary claim.

Issue(s) to be Decided

Has the tenant established an entitlement to receive compensation from the landlord for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy commenced September 1, 2010 and the tenants were required to pay rent of \$700.00 per month. The tenants did not pay rent for July 2012 and the landlord filed an Application for Dispute Resolution seeking an Order of Possession and Monetary Order for unpaid rent. Shortly thereafter the tenant filed this Application for Dispute Resolution seeking \$2,000.00 as compensation for a cockroach infestation and black mould seeping through the closet wall.

It was undisputed that there has been a cockroach infestation in the rental unit for quite some time; however, the parties provided very different versions of events as to when the infestation was reported, the cause of the infestation, and, attempts to treat the infestation.

The tenants testified that they noticed cockroaches in their unit approximately three months after moving in and notified the landlord right away. The landlord has treated the unit seven times and the tenants have treated the unit once. The cockroaches were not eradicated and their numbers were not even reduced except when the tenants treated the unit themselves with a "Raid bomb". The tenants attribute the lack of success to the landlord not treating the entire building. The tenants claimed that the cockroach infestation has ruined the tenants' furniture, short circuited electronics, ruined food, and caused the tenants loss of sleep and great stress.

The tenants further submitted that approximately six months ago a water leak was detected in their bathroom. In the last two months they observed black mould forming on the inside of their bedroom closet wall which is behind the bathroom. The mould has caused the tenants to suffer difficulty breathing, difficulty thinking, gastrointestinal distress, and their cats to become ill.

The tenant denied that he introduced the cockroaches to the unit and submits that they were there when he moved in. In addition, the unit was a former meth lab. The tenants submitted that the landlord fails to properly repair and maintain the property as illustrated by a toilet that did not work properly for three months and the water leak that has not been repaired by the landlord.

In support of their monetary claim of \$2,000.00 the tenants initially testified that this amount represents the value of major pieces of new furniture that has been ruined by the cockroaches: namely two brand new couches worth \$1,100.00; a new computer; and, a hutch. Although the monetary claim did not include loss associated to mould specifically, the tenant submitted that the mould has contributed to the cockroach infestation.

When I noted that the tenants had not supplied any receipts for the damaged furniture and computer, the tenants explained that these items were gifts from relatives and those receipts were not available. I further noted that pictures of the damaged furniture were not provided. When I asked whether the damaged furniture and computer have been thrown away or were still in the tenant's possession I could not understand the response. The tenants then changed their submission to state that the \$2,000.00 would compensate them for both the cockroach infestation, mould, and "everything".

The landlord was of the position that the tenant's claim is retaliatory and in response to the landlord pursuing an Order of Possession. The landlord pointed out that the tenants specifically identified \$1,100.00 as a loss in their testimony which is the same amount as the Monetary Order provided to the landlord under the previous dispute proceeding.

The landlord also submitted the following responses:

- The tenants reported cockroaches approximately 1 year after the tenancy commenced
- Adjacent units have been inspected for cockroaches and not were detected
- The tenants contributed to the infestation and interfered with the landlords attempts to treat the infestation by:
 - Changing the locks to the rental unit
 - Not permitting the pest control technician in at the scheduled time
 - Not sufficiently preparing for treatment
 - Not sufficiently cleaning up dead cockroaches as instructed
 - Bringing used furniture from garbage bins into the rental unit
 - Keeping a very cluttered and unclean unit despite the landlord's requests for the tenants to clean the unit

With respect to the water leak the landlord submitted that the tenants were asked to clear out the clutter from under the bathroom sink which they did not do; nor, did they clean the area.

The landlord acknowledged the unit was formerly used as a meth lab; however, it was completely remediated with permits and inspections before the tenants moved in. As a result, the unit had new walls, flooring, countertops and paint. Cockroaches were not observed during that significant remediation project.

The landlord submitted that she could not see any signs of black mould in the photographs supplied by the tenants. The tenants stated the photographs were taken in the days preceding August 13, 2012 and that although the mould is not very obvious in the photographs it is much worse now.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case a cockroach infestation is undisputed; however, the parties provided opposing opinions as to the source or cause of the infestation. Pest infestations are often difficult to attribute to a particular source or cause. Accordingly, a landlord is generally responsible for treating bug infestations in the residential property so that the unit is suitable for occupation.

The tenants have acknowledged by way of their own testimony that the landlord has provided seven pest control treatments. Thus, it would appear the landlord is taking action to remedy the problem. The question I am left with is why has the infestation persisted or recurred? Each party provided opposing opinions as to the reason the infestation persists or recurs. Neither party provided me with independent information or expert witness testimony to corroborate their respective position. Considering the

photographs provided to me and the verbal testimony I heard from parties, I find that each party has provided an equally probable reasons for the ongoing infestation despite several treatments. Since the tenant bears the burden of proof I find insufficient evidence to satisfy me that the landlord's actions, or lack of action, or negligence has caused the infestation to persist or recur.

I also had difficulty understanding and verifying the tenant's claim that the tenant has suffered a loss of \$2,000.00. It was unclear to me as to whether the furniture or computer have been thrown away or are still in the tenant's possession. Given the tenant were calculating their loss based upon ruined furniture I would find it reasonable that I be provided some evidence to substantiate the value of the ruined items; such as: receipts, photographs, advertised prices, or testimony from the individuals who purchased the items for the tenants. Nor, was I convinced of the tenant's loss given the tenant's changing position as to the calculation of the loss. Therefore, I find the tenant has not established the value of the loss.

From the photographs provided to me, I find I am unable to detect black mould in the bedroom closet as submitted by the tenants. Nor was I provided any independent medical evidence the tenants were suffering as they submitted because of mould.

Finally, the Act requires that a party making a monetary claim show that they took reasonable action to minimize their loss. If I were to accept the tenant's submission that the infestation has been ongoing since three months after the tenancy commenced I find the tenants have not taken reasonable action to address the issue by filing an Application for Dispute Resolution much sooner. Rather, the tenants waited until the landlord pursued an eviction for unpaid rent to file an Application for Dispute Resolution before seeking repair orders and compensation.

For all of the reasons above, I dismiss the tenant's application for compensation.

Conclusion

The tenant's application has been 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: August 24, 2012.

Residential Tenancy Branch