



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Seaside Place-Gulf Pacific Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to comply with the Act and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue- At the outset of the hearing, the evidence was discussed. The tenant agreed that he had received the landlord's evidence; however the landlord's agent (hereafter referred to as a "landlord") said that she had not received the tenant's evidence. In response to my question, the tenant stated that he had sent three duplicate copies of his evidence by registered mail to the Residential Tenancy Branch ("RTB") for the hearing file, the landlord's agent listed on the application for dispute resolution, and the corporate offices of the landlord.

The landlord's agent listed on the tenant's application was unable to be in attendance, as he was called away prior to the hearing, according to the attending landlord.

I have accepted the tenant's evidence as I find his testimony to be clear and convincing as to sufficient delivery of the documents pursuant to section 88 of the Act, in the

absence of a representative from the landlord's corporate office or the named landlord's agent.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act and to recover the filing fee?

Background and Evidence

The evidence shows that this tenancy began on September 15, 2011, current monthly rent is \$843, and the tenant paid a security deposit of \$412.50 at the beginning of the tenancy.

The rental unit is in a 93 unit apartment building and the evidence also shows that the tenant has resided in other units in this building.

The tenant's relevant evidence included a written statement of the tenant's position regarding his application, a copy of a written notice from the landlord informing the tenant of the pest control company visit the following day, pest control company reports, a lab report regarding a liquid substance in the rental unit, according to the tenant, copies of photographs alleged to be insects in the rental unit, a physician's note, and copies photographs of the tenant's skin.

In support of his application, the tenant submitted in September 2011, he noticed that there were insects in his rental unit, at which time he notified the landlord. According to the tenant, the landlord failed to address the insect issue until they were served with his dispute resolution papers.

The tenant acknowledged that a pest control company has attended the rental unit to inspect for insects, but that the pest control company has not resolved the issue.

The tenant submitted that the insects were in the wall behind the kitchen sink and that the only remedy was to take out the wall and find and remove the nests. According to the tenant, the exact problem occurred in other rental units and the landlord remedied the insect infestation by removing the wall behind the kitchen sink. Further the tenant said his son-in-law also saw a hole in the wall behind the kitchen sink.

The tenant submitted that on April 26, when the pest control company attended the rental unit to inspect for insects, the technician said there was water under the sink;

however, the tenant said that he had this liquid analyzed and that the substance was a toxic chemical, as shown by his lab report.

As further proof that there were insects, the tenant pointed to his photographic evidence, which the tenant explained showed bugs according to the enlarged view.

The tenant testified that as soon as the inspections are completed, the insects jump on him when he opens the cabinet doors.

The tenant also submitted that the insect bites have caused him serious skin disorders, as shown by his photographs and the doctor's note.

In response, the landlord argued that they have had the rental unit inspected by a nationally known pest control company after each of the tenant's complaints, and that the company has issued reports each time that there is no sign of insect activity.

The landlord also submitted that the pest control company has treated for insects, even though there were no signs of insects so as to appease the tenant.

The landlord also submitted that the sticky cards given to the tenant showed no signs of bugs as shown by the magnification by the pest control company.

The landlord denied that the wall needed to be removed as there were no signs of insects.

The landlord's relevant evidence included reports from the pest control company.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

Where a tenant requests repairs or reports issues with the rental unit affecting health and safety standards, the landlord must be afforded a reasonable amount of time to take sufficient action.

In weighing the evidence of both parties, I cannot conclude that the landlord was negligent or violated the Act regarding their requirements of addressing the reports of an insect infestation. I find the landlord acted reasonably and promptly when contacted by the tenant that there were insects in his rental unit, as shown by the reports from the pest control company.

The landlord submitted, and I accept, that they relied on their expert in dealing with the insects and that the expert determined that there was no insect activity. I cannot conclude that a pest control company, with a nationally recognized name and reputation, would not want to treat for insects had any been found.

Upon a review of the tenant's evidence, I could not conclude that the magnified photo provided was that of a bug and I was unable to verify what the lab report was meant to conclude.

I find the doctor's note showed what was reported by the tenant and was not conclusive that there were insects in the rental unit due to lack of medical testing.

I therefore find additionally that the tenant has failed to provide evidence of insects in the rental unit, which could be possible through his own pest control company report showing otherwise.

Due to the above, I find the landlord has complied with the Act by taking reasonable measures to address the tenant's requests to remedy the insect problem each time they were notified.

I therefore decline to issue an order requiring the landlord to comply with the Act due to my findings that the landlord has complied with the Act.

If the tenant should hire a licensed, professional pest control company within the next three months and that company issues a report finding that there is a presence of insects in his rental unit as claimed by the tenant, should the tenant share this report with the landlord, I order that the landlord reimburse the tenant the costs of the report.

Also, in the event that the tenant's licensed, professional pest control company does find insects, I order, pursuant to section 62 of the Act, the landlord to make sufficient repairs or provide a sufficient treatment to eradicate the insects as recommended on the report.

Due to the above, I dismiss the tenant's application. As I have dismissed his application, I also dismiss his request for recovery of the filing fee.

Conclusion

The tenant's application is dismissed.

If the tenant hires a licensed, professional pest control company in the next three months and that company finds insects as claimed by the tenant, the landlord is ordered to reimburse the tenant the costs of the report after it is presented.

If that company does issue a report finding insects as claimed by the tenant, the landlord is directed to take the appropriate action as indicated on that report.

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 24, 2013

Residential Tenancy Branch

