



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B.C. Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, RR, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's 10 Day Notice posted on her door on June 10, 2013. The landlord who attended this hearing (the landlord) testified that on or about June 24 or 26, 2013, both he and the other landlord received copies of the tenant's dispute resolution hearing package sent by the tenant by registered mail. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

Both parties testified that they sent one another their written evidence packages. The tenant confirmed that the landlord handed her a copy of the landlords' extensive (162 page) written evidence package on June 13, 2013. Although she said that she had not gone through all of this package, she testified that she understood what the landlords were claiming in that package. The landlord said that he had only received a portion of the tenant's written evidence package, noting that a specific hotel bill seemed missing from the package he had received. I am satisfied that the parties served one another with their evidence packages in sufficient time to enable them to prepare for this hearing and to respond to the case presented by the other party.

At the commencement of this hearing, the landlord said that the tenant has paid her rent for both June and July 2013, and the landlord was no longer pursuing an end to this tenancy on the basis of the 10 Day Notice issued on June 10, 2013. As the landlord withdrew the 10 Day Notice, I advised the parties that I was allowing the tenant's application to cancel the 10 Day Notice, which is no longer of force or effect.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any order be issued against the landlord with respect to this tenancy?

Background and Evidence

This tenancy began on August 1, 2003. Current monthly rent for this rent geared to income one bedroom rental unit is set at \$437.00, payable in advance on the first of each month.

The parties have encountered a lengthy process in attempting to rid this elderly tenant's rental unit of bedbugs. Over the years, the landlord has paid for many chemical and more recently heat treatments of this rental unit. For relatively short periods of time, pest control companies' trained canines have confirmed that the bedbugs have been eradicated from the rental unit. However, within a few months, the problem has re-emerged. The landlord has paid for many treatments and has paid for the tenant's temporary relocation to hotels when it was necessary to do so in order to have her rental unit and its contents treated. Options for accommodation are limited by the tenant's mobility issues as she relies on electric scooters and by her need to sleep in hospital type beds with railings. The landlord has also paid for the tenant's rental of scooters in order to allow her existing mobility equipment to be treated at the same time as the remainder of her rental unit.

The tenant applied for a monetary award of \$2,905.84. Although the tenant submitted some receipts for taxis and hotel bills, she was unable to break down the details of her application for the above amount. At the hearing, I made repeated requests to her to outline the specific bills to quantify her claim. She could not do so. She said that she had modified her claim somewhat when she obtained a better rate at the hotel she was staying at, although this appeared to affect only one of the nights she claimed at a high end hotel in Downtown Vancouver. Based on the written evidence she did provide, the tenant did not dispute my assumption that much of her monetary claim resulted from the \$1,974.89 she was charged for her stay in that hotel from April 18, 2013 until April 26, 2013, when she returned to her rental unit. She also submitted hotel bills of \$280.00 for one night's stay on January 23, 2013 and \$287.50 for a two-night stay at the same hotel

from March 28 to 30, 2013. She also appears to have included taxi fare and meals in her claim.

The landlord provided undisputed written evidence and sworn oral testimony that the landlord offered the tenant the respite unit in the tenant's rental property for the night of the planned heat treatment of her rental unit on April 18, 2013. The landlord testified that the heat treatment for bedbugs only requires tenants to vacate their rental unit for a six-hour period. During the first two hours, the pest control company raises the temperature, the treatment is provided for the next two hours, and the unit cools for the final two hours. The tenant testified that she had tried to sleep in her rental unit on the night of the first heat treatment of her rental unit and almost had to call an ambulance to assist her. She said that her health conditions require her to be absent from the rental unit while the rental unit cools after the heat treatment. She said that the respite unit is not equipped with an adequate bed with bed rails at a height where she can enter and exit the bed. The landlord testified that other tenants who require wheelchairs have used the respite unit and have found the respite unit meets their mobility needs on a short-term basis.

The landlord testified that at one point the landlord offered to pay for a hotel room for the night of the heat treatment in her local community, but was not willing to incur the cost of the high end hotel of her choice in Vancouver. The tenant said that the landlord had jeopardized her chances of staying at a hotel in her local community when he told the landlord that she needed a place to stay because her rental unit was being sprayed for bedbugs. The landlord disputed this claim, advising that the hotel manager told him that the tenant was not a welcome guest at his hotel because of her previous visit in which she brought bedbugs with her to the hotel.

There was also disputed evidence with respect to the reason why the landlord could not obtain a heat treatment on April 18, 2013, the scheduled date for that treatment. As per arrangements between the parties, the tenant was advised that the pest control company would inspect the rental unit on April 17, 2013, to confirm that the tenant had followed the preparation list for the heat treatment the following day. The landlord entered into written evidence a copy of the pre-inspection report which found that the tenant's preparation of her rental unit was so deficient that there was no point in conducting the heat treatment the following day. The tenant testified that the pest control pre-inspection occurred too early on April 17, 2013 (i.e., 2:00 p.m. by her estimate) and she was attending a funeral that afternoon and did not get a chance to complete her preparations for the heat treatment until 6:00 p.m. that evening. The landlord testified that he was able to convince the pest control company to visit the

rental unit on April 18, 2013, but they found that it was not properly prepared for the heat treatment.

An alternative date of April 25, 2013 was provided to the tenant. The tenant apparently remained in the downtown Vancouver hotel between April 18, 2013 and April 26, 2013. The landlord submitted a post-treatment report from the pest control company in which it was noted that the heat treatment was unsuccessful as live bedbugs were found on the tenant's mattress and boxspring. The tenant's couch remained too cluttered to check for the presence of bedbugs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I have reviewed the tenant's application for reimbursement for her expenses at the expensive downtown Vancouver hotel she stayed at on January 23, 2013, while her premises were undergoing a heat treatment for bedbugs. The landlord's written evidence indicates that the tenant was informed that the landlords were unwilling to pay for her stay in that hotel as there were a number of available accommodation options in her own community that were wheelchair accessible. In a January 22, 2013 letter, the landlords confirmed that they were willing to provide financial assistance to cover her rental of a wheelchair and to have her rental unit prepared for the heat treatment of her rental unit at that time. She was clearly advised that should she choose to stay in the downtown Vancouver hotel of her choice during that treatment, she did so at her own expense. By March 2013, the landlords had agreed to reimburse the tenant for \$164.35 of her hotel costs, an amount equivalent to the costs they incurred during her last hotel stay at a hotel in her community. I find the landlord's action in this regard adequate and I dismiss the tenant's application for a monetary award for reimbursement of the remaining portion of her stay at the downtown Vancouver hotel in January 2013, without leave to reapply.

I have also considered the tenant's application for a monetary award for her stay at the same downtown Vancouver hotel from March 28 to 30, 2013. In the landlord's letter of March 25, 2013, the landlords noted that their pest control experts had advised them

that the landlords had paid for the unsuccessful heat treatment of her rental unit on three previous separate occasions. They noted that “the core of the infestation is in your hospital bed and that it should be disposed of.” Since the tenant would not dispose of her bed, viewed as the source of the ongoing problems, the landlords agreed to reimburse the tenant for the following when her rental unit would be treated on March 28, 2013:

- *(the landlord) will hire AP to treat your bed with actisol ‘gas’ on Thursday, March 28, 2013. At the same time they will treat your chair and steam and vacuum the rest of the unit.*
- *(the landlord) will pay for your accommodation for Thursday night only up to \$120.00 you will be responsible for the remaining cost of the accommodation.*
- *(the landlord) will pay for the rental of a wheelchair (in order that your wheelchair will remain in the unit during treatment) for your use up to \$140.00.*
- *You agreed to hire a third party to prepare the unit for the bed bug treatment...*

Please note if you re-infest your unit with bed bugs again you will have to pay for your own rental and accommodation...

I am satisfied that the landlords complied with the above commitment. I find that the landlords’ agreement to provide this level of financial assistance was adequate and reasonable under the circumstances. For these reasons, I dismiss the tenant’s application for a monetary award for reimbursement of additional costs the tenant incurred over the period from March 28 to 30, 2013, without leave to reapply.

On April 5, 2013, the canine inspection for bedbugs occurred following the above-noted treatment on March 28, 2013. In an email from the building manager to the landlord, the building manager stated that the inspection revealed that the “infestation is very bad, the worst being her bed and wheelchair.” The inspection revealed that there were signs of bedbug activity in the entire unit. The building manager noted that another treatment would have to be undertaken soon “otherwise her unit will be overrun with bedbugs.”

The landlord entered into written evidence a copy of an April 16, 2013 email reporting that the tenant had agreed to another heat treatment for bedbugs on April 18, 2013. This commitment was contingent on the tenant preparing her rental unit for the treatment in accordance with the instructions from the pest control company provided to her. Once more, the landlords offered the tenant full use of the respite unit, an offer again rejected by the tenant. She advised that whether or not the heat treatment was

conducted on April 18, she intended to stay at a hotel, likely the downtown Vancouver hotel she stayed at during the previous month.

Although I have given the tenant's claim that she had her rental unit prepared to the pest control company's specifications by early in the evening on April 17, 2013, I find that it would be unreasonable of the landlord to delay sending the pest control company to conduct a pre-inspection until that time. The tenant did not deny that she had failed to prepare the premises in accordance with the instructions by the time the pest control company conducted their pre-inspection in the afternoon of April 17, 2013. I also note that the landlord claimed that the rental unit was still not ready for treatment on April 18, 2013, the scheduled date. I also do not accept that the tenant remained at the expensive downtown Vancouver hotel from April 18, 2013 until April 26, 2013, in the apparent hope that she would for some reason be reimbursed for her almost \$2,000.00 hotel bill. Even if she were entitled to limited reimbursement, which I find she was not, I find that the tenant took little effort to minimize the landlords' losses. By choosing to stay at this hotel for an extended period, the tenant incurred costs over four times higher than the amount of her monthly rent. While I appreciate that the tenant had by this time become frustrated with her ongoing bedbug problem, this does enable her to stay at a luxurious hotel in downtown Vancouver at the landlords' expense.

I dismiss the tenant's application for reimbursement for all of the costs she incurred in April 2013, arising out of her decision to leave the rental unit. I find that she incurred these costs, primarily the hotel costs, knowing that the landlords had refused to reimburse her for these items. I find that the tenant has not provided sufficient evidence to demonstrate that she needed to leave the rental unit beyond the six-hour period identified by the landlords and unreasonably rejected the landlords' offer of the respite unit, which would appear to have been sufficient for any stay that exceeded the six-hour period that is normally required for this type of heat treatment.

In dismissing the remainder of the tenant's application for a monetary award, I note that the tenant was uncertain as to what she had applied for and how she arrived at the \$2,908.84 figure identified in her application for a monetary award. Although I have attempted to capture what would appear to have been the major portions of her claim, this was difficult because the tenant could not properly provide the breakdown of her monetary claim.

I am satisfied that the landlords have taken what I can only describe as exceptional measures to attempt to resolve this bedbug problem in this rental unit and this rental property. I dismiss the tenant's application for a rent reduction to reflect the loss in value of her tenancy. I find ample evidence that much of this problem results from the

tenant's refusal to discard infected equipment and possessions and to properly prepare her rental unit for the costly treatments applied by the landlords' pest control company.

Conclusion

I allow the tenant's application to cancel the 10 Day Notice, which is no longer of force or effect. This tenancy continues.

I dismiss the tenant's application for a monetary Order without leave to reapply. I dismiss the tenant's application for a reduction in rent 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*.

Dated: July 18, 2013

Residential Tenancy Branch

