



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ranier Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to make repairs to the rental unit, 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.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary 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.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation, to an order requiring the landlord to make repairs to the rental unit, and to recover the filing fee?

Background and Evidence

The tenancy began on April 15, 2011, and monthly rent is \$780.

The rental unit is one of a 25 unit apartment building.

The parties were in dispute resolution earlier, with a hearing held on the tenant's application for dispute resolution seeking an order requiring the landlord to comply with the Act, to make repairs, and for a rent reduction. The tenant's issue for which he was seeking remedy stemmed from his allegation that there were uncontrolled bedbugs in his rental unit.

The hearing on March 4, 2013, resulted in a Decision by another Arbitrator, dated March 5, 2013. In that Decision, the Arbitrator issued an Order to the landlord with a series of directives, directly appended as follows:

- *“That a schedule of inspections, for licenced pest control follow-up in the building, will be developed and the tenant will be given a written copy of this schedule;*
- *That all treatments for pest control be followed by an inspection of the treated and surrounding suites, within the time-frame suggested by the licenced pest control company, in order to establish the need for further treatments;*
- *That any unit that has been treated for pests, inspected as required and found to have pests will again be treated as soon as possible and as recommended by the licenced pest control company;*
- *That tenants will be given notice of entry, in accordance with section 29 of the Act and pest control preparation sheets will be provided each time treatment or inspection is planned for a unit;*
- *That any occupant who does not cooperate with pest control treatment preparation and inspections will be given notice of their responsibility to cooperate and that the landord is expected to ensure all occupants comply with the instruction of the licenced pest control company;*
- *That the landlord will take steps in accordance with the Act, should any occupant fail to cooperate with attempts to eradicate the pests, as those failures can contribute to prolonged infestation and impact the quiet enjoyment of other occupants;*
- *That the tenant be given permission and the authority to directly contact the licenced pest control company hired by the landlord, to report the presence of bed bugs and that the landlord will give the pest control company authority to respond to reports made by the tenant, so that delays in inspection and/or treatment do not occur;*

- *That the landlord give the licenced pest control company the authority to share general information of the on-going need for treatment and inspections in the building with the tenant; and*
- *That at the time of an inspection or treatment by the licenced pest control company occupants of the affected unit will be immediately notified, either in person or by way of a note left in the unit, if any follow-up visits are required and, if so, when to expect those visits by the licenced pest control company will be scheduled.*

The parties agreed that a pest control technician would inspect the tenant's room on March 5, 2012."

The tenant, in that Decision of March 5, 2013, was also granted leave to apply for compensation, from March 5, 2013, onward.

In the present hearing, the tenant testified that the landlord has done nothing since the last hearing, has not taken the first step on the list of directives and orders of the previous Arbitrator, and that he confirmed this with a call to the pest control company technician the morning of the hearing.

The tenant said that he is still seeing bedbugs and is being bitten by them in his rental unit, additionally adding that he has only been able to sleep in his rental unit 4 of the last 15 months.

The tenant's monetary claim is \$3120, which is complete reimbursement of his monthly rent since March, the four months since the last Decision and the filing of his application for dispute resolution.

In response, the landlord said he has complied with the last Decision and has incurred many pest control company charges, which were in front of him during the hearing, but not submitted into evidence.

The landlord then stated that he had not received the previous Decision, although he confirmed his address at the hearing and the tenant confirmed that was the address he used in his previous application. In response to my question, the landlord said that he had not contacted the Residential Tenancy Branch ("RTB") about a Decision, even though he had been in attendance at the previous hearing.

The landlord then argued that it was hard to control the bedbugs due to all the tenants in the building being bringing in the bedbugs.

The landlord failed to supply any documentary evidence that he has complied with the Decision of March 5, 2013, saying that he understood we would be discussing the matter at the hearing.

Analysis

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

Section 32 of the Act requires a landlord to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation.

In the case before me, the issue of the bedbug infestation in the rental unit and the residential property has been dealt with in the previous Decision of another Arbitrator on March 5, 2013; therefore it was not necessary for me to consider the landlord's response to the tenant's request to address this issue.

The Arbitrator issued specific orders to the landlord and I find the landlord submitted no evidence that he has complied with a single directive which is previously outlined in this Decision as well as the Decision of March 5, 2013. I also find that the landlord's testimony that he never received the previous Decision, dated March 5, 2013, lacked credibility, as at first he referred to the Decision and did not question receipt of the Decision until the hearing was nearing completion and after questioning.

I find the landlord has not taken any action necessary to remedy the bedbug infestation or to comply with the Decision of March 5, 2013, and I find this insufficient response has caused the tenant to suffer a diminished value of the tenancy and loss of use and enjoyment of his rental unit. The Arbitrator in the previous Decision also granted the tenant leave to reapply for compensation should the landlord fail to address the issue of the bedbugs.

Residential Tenancy Branch Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Considering the landlord's willful disregard of the Decision of March 5, 2013, and his continued failure to begin the course of treatment of the bedbug infestation as ordered, I

find that tenant's request of a loss of use and diminished value of 100% to be reasonable as I accept the tenant's testimony that he is able to stay at his rental unit very sporadically due to the bedbugs.

Pursuant to section 62 of the Act, I grant the tenant a retroactive rent abatement and I order the landlord to compensate the tenant in the amount of \$780 per month since March 5, 2013, as allowed by the previous by the Arbitrator, as I find failing such diminished value being granted to the tenant, the landlord likely may not comply with the order of the RTB.

I therefore order the landlord to compensate the tenant in the amount of \$780 per month retroactively for 26 days in March (March 5-31) in the amount of \$666.64 ($\$780 \text{ monthly rent} \times 12 \text{ months per year} = \$9360 \text{ yearly rent} \div 365 \text{ days per year} = \$25.64 \text{ daily rate} \times 26 \text{ days}$) and for the months of April, May, June, and July, in the amount of \$3120, for a total monetary award of for devaluation of the tenancy in the amount of \$3786.64.

I also allow the tenant recovery of the filing fee of \$50.

Due to the above, I find the tenant is entitled to a monetary award of \$3836.64.

I direct the tenant to satisfy his monetary award as follows:

The tenant is to withhold rent of \$780 for August, September, October, and November 2013, for a total of \$3120. The balance of his monetary award is \$716.64 ($\$3836.64 - \3120), which amount I direct the tenant to retain from his monthly rent of \$780 for the month of December 2013. For clarity, the tenant's rent payment for December 2013 is \$63.36.

Until the landlord has fully complied with the orders and directives of the Arbitrator contained in the March 5, 2013 Decision, I grant the tenant a continuing rent abatement of \$780 per month, beginning in January 2014, forward. I further authorize the tenant to withhold his monthly rent payment of \$780 until the landlord has filed an application for dispute to prove to the Residential Tenancy Branch that it has complied with this Decision and the Decision of March 5, 2013, and be granted an order restoring the tenant's monthly rent of \$780.

When the tenant is withholding his monthly rent as directed above, the landlord is to consider that rent for these months is paid in full.

Should the tenancy end before the tenant is able to fully redeem his monetary award by withholding monthly rent, the tenant may seek a monetary order from the RTB.

Conclusion

For the reasons above, the tenant's application is granted, he is granted a retroactive and ongoing rent abatement until the landlord has fully complied with the orders of the RTB as outlined in the Decision of March 5, 2013, by another Arbitrator, and he is to satisfy his monetary award as directed above.

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* and is being mailed to both the applicant and the respondent.

Dated: July 22, 2013

Residential Tenancy Branch