



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes FF, MNDC, RP, RR

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. I find that the Application for Dispute Resolution/Notice of Hearing was personally served on June 14, 2013.

The original Application for Dispute Resolution filed by the tenant claims the sum of \$10,000. She subsequently filed documents that purported to increase her claim to \$89,656. I advised the tenant that my jurisdiction was limited to \$25,000 and the tenant was given an option of withdrawing her claim so that she could re-file in the Supreme Court of British Columbia or proceeding with a limited claim so that it complied with the monetary jurisdiction. The tenant revised her claim so that it complied with the monetary jurisdiction of the Residential Tenancy Branch and claimed the following:

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|--------------------------------------|-----------|
| • Pain and suffering | \$3000 |
| • Medication | \$750.66 |
| • Loss of wages as a yoga instructor | \$700 |
| • Reimbursement of 80% of her rent | \$2121.20 |
| • The cost of an exterminator | \$60 |
| • Filing fee | \$100 |

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to a repair order?
- c. Whether the tenant is entitled to an order for the reduction of rent?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on November 1, 2012. The tenant shares the rental unit with two other tenants. She pays rent in the sum of \$333 per month. The tenant paid a security deposit in the sum of \$166.50 at the start of the tenancy.

The tenant testified that she has suffered severe health problems over the last several months and she testified the cause of her problems is the condition of the rental unit. In particular she testified that she has experienced the following health problems:

- Recurring sever bladder infection
- Her skin has been extremely itchy starting in her legs, stomach, vagina, hair, eyebrows and eyelashes
- Her hair is falling out
- She has suffered from a severe loss of appetite
- She has been unable to sleep because of a rat scratching in the wall
- She saw white eggs and in a few hours these would turn black. She submits this is caused by mites or some other insect.

The tenant made several visits to a number of physicians and has received various diagnosis including scabies, eczema, foiloculities, pinworms. She has taken an assortment of different antibiotics but her symptoms continue to bother her.

The tenant presented a large number of documents that evidence her treatment and the problems caused by her condition. She testified that she has lost work because of it but

failed to present evidence from her employer to support this. Further, she has been unable to fully enjoy life because she is continually dealing with an itch.

The tenant relies on a letter dated June 15, 2013 from N K (a physician) from a Medical Clinic. It is difficult to read the letter but it appears to say that "...the tenant has seen multiple physicians for her persisting skin complaints including rash and itching along with chronically disturbed sleep. She has been treated with several medical prescriptions that she has had to fund by herself. She has also endured considerable expense with laundry, dry cleaning, etc. Upon discovery of vermin/insects in her apartment she promptly vacated her living quarters and her ...issues decreased promptly for the first time since November 2012.

In November 18, 2012 the tenant reported the presence of a large animal in the walls of the rental unit and she thought it was probably a rat. The landlord testified that on November 20, 2012 the landlord's handyman took steps to deal with the problem including the closing of holes into the rental unit. The handyman was unsuccessful in solving the problem and the tenant continued to complain to the landlord. On January 9, 2013 the landlord hired Canadian Pest Control to deal with the problem. The pest control technician set traps. It appears the problem was resolved for approximately one month. However, the scratching in the walls re-appeared. The landlord provided evidence of a communication from the pest contractor to the effect that he thought they had a mouse problem and not a rat problem and their strategy needed to be different.

In June 2013 the tenant advised the landlord that her dermatologist told her that her skin problem was caused by bed bugs and mites from the basement. The tenant hired a pest control company at a cost of \$60 who inspected the rental unit and reported "found a small case of insects in room."

The landlord testified the first time the tenant advised him about her skin problem and that it might be related to the condition of the rental unit was on June 6, 2013 by text message. The landlord was upset that the tenant had hired an exterminator to do an

inspection at a cost of \$60 which she was now trying to recover from him without first advising him that a problem existed. On Monday June 10, 2013 the landlord e-mailed the pest control technician hired by the tenant to do the inspection instructing him to do the treatment and provide him with the invoice. The treatment was completed by the pest control company and the landlord has paid that invoice in the sum of \$100.

The tenant testified the problem continues to exist and she of having to live with this problem. The landlord has hired another pest control company who will be treating he rental unit tomorrow.

The tenant works in a business that sells soap products. The tenants other roommates have not experienced similar problems. The tenant submits this is because they are seldom home.

The tenant blames the condition of the rental unit as causing her skin problems and she seeks monetary compensation as a result.

The landlord submits the tenant has failed to present sufficient evidence to establish that her problems have been caused because of the condition of the rental unit and he denies responsibilities. In particular the landlord submits as follows:

- The evidence of the tenant and her doctor is not sufficient to attribute the cause of her medical problems is related to the rental unit. The doctor did not testify at the hearing. The letter from the doctor repeats the tenant's story and does not provide an independent assessment connecting the tenant's condition to the rental unit.
- The landlord responded promptly when advised on the problem. The first time the landlord was advised on the tenant's skin problem was when she texted the landlord on June 6, 2013. The tenant's pest control contractor was hired to complete the treatment within a couple of days.
- The tenant's roommates have not experienced skin problems.

- The tenant works in a soap store and perhaps her condition was caused by an allergic reaction to the soap.
- The landlord has instructed another pest control company to treat the rental unit and they are scheduled to complete their treatment tomorrow.

Analysis

There is no question that the tenant has suffered significantly over the last several months. However, it is a much more difficult problem to determine what has caused the problem. The tenant is claiming against the landlord and she has the burden of proof to establish her claim on a balance of probabilities. After carefully considering all of the evidence I determined the tenant has failed to establish that the condition of the rental unit has caused her skin problems for the following reasons:

- The tenant failed to produce sufficient evidence to establish that her medical problems have been caused by the condition of the rental unit. The tenant has seen a number of doctors and there have been a number of diagnoses.
- The letter from her doctor dated June 15, 2013 is a summary of the story the tenant has told her doctor and is not an independent assessment of the condition of the rental unit.
- The tenant failed to advise the landlord that she was experiencing problems. The first time she advised the landlord of the problem was on June 6, 2013. The tenant has failed to prove the landlord was negligent in failing to respond to a problem where she did not advise the landlord that a problem existed. The tenant advised the landlord of the presence of a rat/mouse. The landlord sufficiently dealt with that problem and the tenant has failed to prove her skin problems relate to the presence of a rat/mouse.
- The landlord has acted reasonably once the tenant advised the landlord of the problem on June 6, 2013. He authorized the tenant's pest control company to proceed with the treatment a short time later. He has hired another pest control company to proceed with a treatment which is set for July 10, 2013. The tenant failed to prove the landlord was negligent.

- The tenant failed to provide sufficient evidence that an arbitrator can conclude that there are mites, insects or other vermin that have caused the tenant's problems.
- In coming to this conclusion it is relevant to consider that the other two roommates have not suffered an adverse reaction to living in the rental unit. There are other possible explanations for the cause of the tenant's medical condition.

Monetary Order and Cost of Filing fee

With respect to each of the tenant's claims I find as follows:

- a. I dismissed the tenant's claim in the sum of \$3000 for pain and suffering as the tenant failed to prove that her medical problems were caused by the negligence of the landlord or the condition on the rental unit.
- b. I dismissed the tenant's claim in the sum of \$750.06 as the tenant failed to prove that landlord is responsible to pay these sums.
- c. The tenant failed to present evidence to prove her wage loss claim. Further, she failed to prove the landlord is responsible. Accordingly, this claim is dismissed.
- d. The tenant claimed the sum of \$2131 being the reimbursement of 80% of the rent. In January the landlord offered to reimburse the tenant \$75 for the reduced value of her tenancy because the landlord was not able deal with the rat/mice problem as quickly as he had hoped. I determined the tenant is entitled to \$150 being a reasonable sum for this claim.
- e. I determined the tenant is entitled to \$60 for the cost of reimbursing the tenant for money she has paid to an exterminator. The landlord has offered to pay this sum.
- f. The tenant also claims the sum of \$100 for the cost of the filing fee. Most of the tenant's claim has been dismissed for lack of proof. I determined the tenant is entitled to \$50 for the cost of the filing fee.

- g. I determined that it was appropriate that the landlord hire a pest control contractor inspect and treat the rental unit within 10 days of the date of this order. By the time the parties receive this decision the landlord's pest control contractor will have already completed this. However, in case that has not happened I determined that it was appropriate to make such an order.
- h. I dismissed the claim for a reduction of rent as the tenant failed to prove the landlord has been negligent or is responsible for the tenant's condition.

Conclusion:

In summary I ordered that the landlord pay to the Tenant the sum of \$210 plus the sum of \$50 in respect of the filing fee for a total of \$260.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 09, 2013

Residential Tenancy Branch