



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS MACAULTY NICOLLS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 8, 2013, by the Tenants to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for other reasons, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Landlords testified that they did not receive copies of the Tenants' evidence; all they received were three pages consisting of the application for dispute resolution and the notice of hearing documents. The Tenant argued that she put all the papers she was given at the *Residential Tenancy Branch* through the manager's mail slot on August 17, 2013.

The Tenant was not able to provide clear testimony regarding how or when the Landlord was served copies of their evidence. She kept referring to documents that were given to her by the *Residential Tenancy Branch*. The *Residential Tenancy Branch* does not copy or prepare packages of evidence for any party.

Based on the above I find the Landlord was not properly served with copies of the Tenants' evidence.

Section 3.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates how evidence must be served on the other party. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Landlord has not received copies of the Tenants' evidence I find that evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

The Landlord stated they did not submit documentary evidence in response to this claim.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order?

Background and Evidence

The parties confirmed they entered into a written fixed term tenancy agreement that began on January 31, 2013 and was set to expire in one year. Rent was payable on the first of each month in the amount of \$900.00 and on January 17, 2013, the Tenants paid \$450.00 as the security deposit. On October 26, 2013, the Tenants provided the Landlord with written notice to end the tenancy effective October 31, 2013. The Landlord conducted the move in inspection on February 1, 2013 and told the Tenants the move out inspection would be conducted on October 31, 2013 at 1:00 p.m. The Tenants did not show up for the 1:00 p.m. inspection because they were too busy. The move out report was completed in the Tenants' absence on October 31, 2013 at 1:00 p.m. At some time after 5:00 p.m. on October 31, 2013; the Tenants put the apartment keys through the Landlord's mail slot and in the door. No forwarding address was provided to the Landlord.

The Tenant testified that they are seeking \$23,567.37 to cover the cost of their possessions and for the stress of having to live with bed bugs. Her husband moved into the unit without furniture and slept on the floor. They purchased new furniture when he arrived. During that first week he had red itchy spots and reported the issue to the Landlord who had pest control treatment that same day. The female Tenant moved in sometime in March 2013 and she reported being bitten by bugs.

The Tenant argued that after the treatments she began coughing and has had health issues. She is depressed after living with the bedbugs for so long. She believes the Landlord failed to notify them about the bedbugs before they moved in. She could not provide the details of how many treatments were done but she knows there were several. The Tenants are seeking \$23,567.37 to cover the cost of all of their furniture,

possessions, and books. She confirmed that they did not have tenant insurance and they felt they had to throw away all of their possessions to get rid of the bedbugs.

The Landlord testified and provided a chronological list of inspections and treatments. The Tenant moved in on February 1, 2013 and there were no complaints until February 25, 2013. A treatment was performed that day and they did not hear about another complaint until May 2013 when the wife arrived and moved in. An inspection was conducted on May 10, 2013 and a treatment was done on May 23, 2013 on everything in the unit.

The Landlord stated that about two days before each treatment the Tenants were provided written instructions on how to prepare their unit for treatment. The Landlord read the May 30, 2013 treatment report which indicated the Tenants had not bagged their clothes and had not prepared the unit properly so the pest control company treated as much as they could. After the May 2013 treatment there were no complaints until August 2013. The August 12, 2013 inspection report indicates that the living area was cluttered and they found a mouse inside the unit. The treatment was done on August 15, 2013 where the entire unit was dusted and a monitor was installed. The inspector noted his concerns about the clothing that was left in the closet and indicated that the clothes should be placed in the dryer for over 45 minutes. When the inspector returned August 22, 2013 there was no bed bug activity recorded on the monitors and no bugs were found. On August 29, 2103 another inspection was conducted and they found live bed bugs so they treated the unit again.

They checked the unit September 5, 2013 and found no activity. They treated on September 11, 2013, and again found no activity so they steamed the bed. On October 9, 2013, the Landlord paid for a full building inspection at which time there were no hits or bed bug activity. The Landlord pointed out that each time the Tenants' unit was treated or inspected the unit beside them and below them were also inspected and treated to limit the movement of the bedbugs. Several other units were treated as well.

In closing, the Tenant pointed out the two public reports which clearly show this building has been recorded in the past to have had bed bugs. The Tenant could not provide testimony about which section of the Act the Landlords breached and argued that she was depressed about all of this because they had to through away all of their possessions.

The Landlord confirmed the public reports and argued that they have never purposely attempted to hide their history of bedbugs. They submitted that as landlords they do their part by having the pest control company treat whenever necessary; however,

these Tenants have been found to not properly prepare their unit for the treatments. They also assert that the Tenants are bringing in the bed bugs, as suggested on one of the inspection reports. She noted that the Tenants travel back and forth from an eastern city as well as another country overseas and could easily be transporting the bed bugs along their travels.

Analysis

I have carefully considered the foregoing, and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

The Tenant is of the firm belief that the bed bug infestation was established in the rental unit when they moved in on February 1, 2013. The Landlord has kept very detailed records and noted that the first complaint was not received until February 25, 2013, which is also the first day they had the unit treated for bed bugs.

Given the ability of bed bugs to lay dormant for several months and to jump from one article to another and to travel with unsuspecting hosts, I cannot determine with any certainty whether the bed bugs were resident at the beginning of the tenancy or they came later; such as when the furniture was purchased and brought into the unit.

In determining the Tenants' claim I must consider if both parties upheld their requirements under the Act, Regulation, and tenancy agreement. The Tenant is required to pay rent while the Landlord is required to provide the Tenant with quiet enjoyment of the unit. In the case of treatment for bed bugs a tenant is required to properly prepare the unit and their possessions for treatment while the Landlord is

required to provide the pest control service. The parties are also required under section 7 of the Act to ensure they do whatever is reasonable to minimize the damage or loss.

In this case I find there to be insufficient evidence to prove the Landlord failed to comply with their obligations under Act. Rather, the evidence shows the Tenants are the ones who failed to uphold their requirements because the evidence supports they did not always properly prepare the unit or their possessions for pest control treatment.

The Tenants made a conscious decision to throw out all of their possessions instead of having them properly treated. There is no evidence to indicate that bed bugs harm or destroy furniture and books. However, there is evidence that products can be used to kill or remediate the bedbugs. Furthermore, the Tenants did not have tenant insurance to cover any potential losses and they made no effort to bring this issue to dispute resolution for assistance in resolving this issue, prior to ending this tenancy.

Based on the above I find there is insufficient evidence to meet the four part test for damages, as listed above. Accordingly, I dismiss the Tenants' claim; without leave to reapply.

Conclusion

I HEREBY dismiss the Tenants' claim; 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: November 12, 2013

Residential Tenancy Branch

