



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COHO PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, OLC

Introduction

The tenant applies for a monetary award for damages resulting from an insect sting or bite and for an order that the landlord comply with the law and its contractual obligations and remove a dog waste container beside the door the apartment building.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to the relief claimed?

Background and Evidence

The rental unit is an apartment in a “mixed use strata” complex. There is a written tenancy agreement showing the landlord to be the “The City of Vancouver.” The tenancy started March 22, 2011. The monthly rent is \$700.00. The landlord holds a \$350.00 security deposit.

On Saturday, August 31, 2013 the tenant was entering the apartment building when she was stung or bitten on the nape of her neck by an insect. She swatted it but it flew out and away. She went outside the building but could not see what type of bug it was.

The injury turned out to be significantly more than a simple insect bite. The tenant reports that it was immediately itchy and painful. The next day she had a headache and her neck was stiff. She had flu-like symptoms. Ultimately she attended a physician and was prescribed a cream for the bitten area. The affected area was larger than a dollar coin.

The tenant is convinced that the bug that bit or stung her had been attracted to the front door of the building by the existence of a small waste basket just outside the door. The waste basket is a service arranged by the landlord for a building tenant to deposit dog feces collected while walking his or her dog. From the photo evidence the basket is marked as being for dog waste and has a removable plastic bag liner and a cover. The tenant argues that the bug that landed on her came from the basket or was attracted by the basket, and also that the basket smells and is a health hazard. She seeks an order that it be moved.

The tenant testified that shortly after being bitten she told a security guard named "Jeremy" that she had been bitten and told him she wanted to see the surveillance video the landlord apparently operates in the lobby of the building.

On the following Tuesday, September 3rd, the tenant met with Mr. E.P., then the assistant manager of the building. She questioned him about who put the waste basket in front of the door. She says she asked him about seeing the video footage of the lobby.

By email September 16th, the tenant wrote to Mr. H., the property manager, asking to see the video of the lobby on the day in question. After some discussion about privacy issues, Mr. H. reported that the landlord recording system is "written over" every two weeks. The recording of August 31st was gone.

The tenant proffered three witnesses in support of her claim. The first, Ms. L.L. did not respond when telephoned by the teleconference operator and so did not give evidence. The second, "Mike," answered the telephone but declined to participate. The third, "April," did not respond when telephoned.

In support of its defence, the landlord's lawyer called Mr. B.D. who is the owner/operator of the business the landlord has contracted with to provide and maintain dog waste containers. He testified that the containers are exchanged once a week, have lids that sit on top of the containers. He says the containers don't attract insects. He says that as far as he knows there have been no reports to him of insect bites from the landlord's site. He says he maintains 700 to 800 sites and has not had insect complaints. Occasionally there are odour complaints he says.

The landlord called Mr. E.P.. He was, at the time, the assistant manager. He acknowledges meeting the tenant about her bite/sting on September 3rd but denies any discussion about the landlord's video recording for that day. He says he reported the

incident to his superior Mr. H. He says he passes by the front of the building regularly and the top is always on the dog waste container and that he has never noticed flying insects frequenting the container. He says there is a sticker on the lid of the container that says "Scooby's Dog Waste Removal." He says the landlord has been using Mr. E.P.'s dog waste removal service since June 2012.

Analysis

The written contract shows that the City is the landlord and so the tenant's application naming the management company as her landlord is amended accordingly.

I find as a fact that in the late afternoon on August 31, 2013 the tenant was bitten or stung by a flying insect just after entering the front door of her apartment building. I find it most likely that the insect flew in behind her and was not already present inside the building.

I find that the tenant suffered a significant inconvenience from the bite/sting, having to go see a doctor and use a prescription medication to treat the area.

While a visual recording of the front door and/or lobby may corroborate the fact of the tenant being bitten/stung, I consider it unlikely that such a recording would show that the insect inflicting the damage was somehow attracted to the area by the dog waste container outside the door.

The evidence simply does not show that the insect was likely there at the building entrance because of the dog waste container. That is an essential connection for a claimant such as the tenant to prove and she has failed to do so. Further, she has not established that the existence of the dog waste container outside the door poses a health risk of any kind. Both assertions are merely her unqualified opinion. It would be nothing more than speculation for me to agree with her.

In reaching these conclusions I discount the evidence of Mr. B.D. The landlord had arranged for him to call in to the hearing and by accident he was unannounced and present during the entirety of the tenant's evidence. Secondly, it cannot be ignored that he was being asked to verify that he operates his business in a safe manner, free of insect or health risk (I do not wish to imply any bad faith on his part).

I put little importance to the fact that the video recordings were overwritten and not available. I find it rather out of the ordinary that someone just bitten or stung by an

insect would think to tell a passing security guard that she wanted to see a video recording of the incident. I consider Mr. E.P.'s lack of foresight to ensure preservation of the video to have been completely normal. The video "surveillance" of the building entrance is no doubt conducted to prevent criminal activity and to provide evidence in the event of criminal activity. I find it well within the realm of the normal for Mr. E.P. to have failed to connect the report of an insect sting/bite with the preservation of video surveillance evidence. I consider that any recording of the incident has been destroyed in the ordinary course and not in an effort to destroy incriminating evidence.

I consider it unlikely that there was any significant flying insect activity around the dog waste container or that there was any significant odour from it. The landlord has provided the container as a service to the tenants of the building since June 2012. Had there been any significant problem or even a relatively insignificant problem with insects or odour, it would have cost the landlord nothing to move the container a few feet away from the door. Indeed, it appears that since the first hearing day of this dispute the landlord, or perhaps Mr. B.D., has done exactly that. It should be noted that such subsequent remedial measures are not proof of negligence or of culpable conduct.

At the end of the landlord's evidence the tenant requested that she be allowed to call the witnesses who did not respond at the first hearing. The tenant argued that she suffers from a blood sugar condition that causes her to lose focus or concentration. Further, she says the tenant above her makes noise in the night and her sleep suffers as a result, further impairing her ability to prepare for and conduct the hearing on the first day.

The witnesses were apparently not then available to be called. Allowing the tenant's request would mean adjournment to another hearing day. Counsel for the landlord objected to an adjournment for that purpose.

I disallowed the tenant's request. She had approximately six weeks to prepare for the hearing of her application. Without medical evidence I was not prepared to conclude that her blood sugar condition reasonably prevented her during that time from arranging for her witnesses to be available on the first hearing date. According to the tenant's description of their expected testimony, none of witnesses would give substantive evidence that the insect that bit the tenant was attracted by the waste container or that the waste container posed a health risk. This dispute resolution process is designed for the layman and procedure should be very flexible as a result, however, in this case I was not persuaded that in these circumstances the tenant's failure to prepare outweighed the inconvenience an adjournment would impose on the landlord. I note

that the tenant indicated she is aware of her right to review under the provisions of the *Residential Tenancy Act*.

At the end of the hearing the tenant alleged that the proceeding was somehow tainted because the landlord's lawyer was in a conflict of interest, being or having been on the board of directors of the affordable housing society connected to the operation of the apartment building. I dismissed this objection, not being able to see any conflict.

Conclusion

The tenant's application must be dismissed.

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: January 08, 2014

Residential Tenancy Branch

