



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, O, FF

Introduction

The tenants apply for damages for breach of the landlord's statutory obligation to provide and maintain suitable accommodation resulting from the discovery of cockroaches in the rental unit.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that there has been a breach and, if so, have the tenants suffered damages as a result? If so then what is an appropriate award?

Background and Evidence

The rental unit is a one bedroom apartment in a 56 unit apartment building. The tenancy started March 1st, 2014 for a one year fixed term at a monthly rent of \$825.00. The landlord holds a \$412.50 security deposit.

The tenant Mr. S.W. moved in on March 1st. His wife, Ms. M.Y. joined him from the United Kingdom on March 11th.

According to the tenants' testimony, on March 20th, they discovered bugs; "a sink full of roaches" according to Mr. S.W. The landlord was immediately contacted.

It appears the landlord quickly arranged for a pest control company to attend and assess the situation. The company also entered and assess the adjoining apartments.

According to the pest company's report of March 20th, it found "lot cockroaches behind the stove and behind the fridge." It applied "bait" to the infested areas. It appears the pest company inspected apartment #107 next door on March 24th and found "minor live activity" behind the fridge. Two other suites were examined but "no activity" was observed.

On March 27th apartment #107 was “baited” and it was noted that the occupant had reported “two roaches.”

On April 15th the applicant tenants’ apartment was inspected and the pest company reported “... no activity found. Baited for cock roaches [*sic*] in kitchen and Bathroom [*sic*].”

On June 5th the applicant tenants’ apartment was again inspected. The report states the apartment was “(b)aited for cockroaches, unit clean, dead roaches found. Similarly, apartment #107 was baited though no signs of activity.

The tenants brought this application on June 10th.

The tenant Ms. S.Y. testified that the pest control man told her that the level of infestation indicated that the cockroaches had been in the apartment since before the tenants took possession on March 1st.

There is some suggestion in the landlord’s material that the tenants’ brought the bugs with them.

It is not disputed that the tenant Mr. S.W. is totally blind, nor that that the tenant Ms. M.Y. is severely visually impaired. Ms. M.Y. says she could only see the bugs if they appear on light coloured surfaces.

Ms. M.Y. claims to have been “incredibly stressed” by finding a “sink full of bugs.” She states that their enjoyment of the premises has been limited because of the pests. She says they cannot entertain, must observe scrupulous cleanliness and must have family members come by to help.

The landlord’s representative Ms. H. claims to have a move out inspection report from the prior tenant as well as a move in report for these tenants and that neither mentions bugs. Neither report was presented as evidence. She states that an employee cleaned the rental unit a few days before March 1st and there was no report of bugs. She says there has been no report of prior bug activity in the building for five years. She claims that the apartment was vacant for a month before the tenants moved in. The tenant Mr. S.W. disputes this, saying he met the previous tenant at the premises when he was there in February.

Analysis

I do not consider that a move-in or move-out inspection would necessarily uncover the existence of cockroaches. The cleaning person did not give evidence and so it cannot fairly be determined what he or she might have seen. The fact that the tenants discovered the bugs shortly after move-in and that the neighbouring unit had cockroaches as well, leads me to the conclusion that it is more likely that the bugs were there prior to these tenants move-in.

It is also apparent on the evidence that the landlord took immediate and appropriate steps to attend to the problem and as a result were able to minimize its impact on these tenants and the neighbours.

Nevertheless, this is not a question of whether the landlord was somehow negligent or not. If it were, I'd have little hesitation in saying the landlord does not appear to have been negligent in somehow permitting entry of the bugs or failing to take reasonable steps to eradicate them. Rather, the question is whether the landlord breached its obligations under the tenancy agreement or the *Residential Tenancy Act*.

Section 32(1) of that *Act* provides:

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Having regard to the character of this rental unit, particularly as denoted by its location and rental level, I find that the landlord has breached this provision of the *Act* by providing an apartment with a minor cockroach infestation.

I find that the tenants have suffered anxiety and inconvenience as a result. At the same time I do not agree with the tenants' subjective assessment of their loss. The pest company, on each of its attendances, found very few bugs and, in June, none at all. Their reports were relayed to the tenants. There is no evidence that the tenants themselves were trapping the bugs or removing them or even finding any bugs between the pest company's inspections.

Having regard to all the circumstances, and considering that a visually impaired person knowing of the bugs but being unable to see them would suffer more stress in this situation than a person with full sight, I consider \$300.00 to be a fair compensation for

having to suffer the cockroach discovery, anxiety over having the pests, the inconvenience of the pest company attendance and the extra cleaning requested to assist in eradication in March, plus \$100.00 for having to endure some minor bug presence in April, \$100.00 for May and \$50.00 for the period June 1 to the date of this hearing, including having to put up with the June 5th inspection and baiting.

Conclusion

The tenants are entitled to a monetary award totalling \$550.00 plus recovery of the \$50.00 filing fee. I authorize them to reduce their next rent due by \$600.00 in full satisfaction of the award.

If the problem continues, the tenants are free to re-apply for damages incurred after the date of this hearing.

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: August 08, 2014

Residential Tenancy Branch