



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the Act?

Background and Evidence

The tenancy commenced on August 1, 2011; rent was \$1,075.00 per month. The tenancy ended effective October 1, 2013.

The tenants have made the following claim:

Pest traps	\$47.04
Mattress covers	210.57
Pest control treatment	1,155.00
Cost of key	50.00
Mail cost	10.00
TOTAL	\$1,472.61

On April 4, 2013 the female tenant began to receive some sort of insect bites. A pest control company was contacted and they recommended the tenants purchase mattress

covers and traps, so that belongings could be protected and the pests could be properly identified.

There was no dispute that on April 17, 2013 the tenants became aware of bed bugs in the rental unit. The female tenant found a bed bug on her desk. Email evidence supplied by the tenants indicated that the tenants contacted the landlord who replied on April 17, 2013, to the tenant's notice of bed bugs in the unit. The landlord suggested the tenants remove all bedding and clothes, complete a deep cleaning of the unit and "possibly hire an exterminator."

On April 18, 2013 the tenants replied, informing the landlord they had hired a pest control company to come to the unit and that a heat treatment would possibly be completed that Friday. The tenants said they would be available to discuss this further.

The tenants said that they informed some neighbours of the bed bug discovery, to warn them about the upcoming treatment that was to take place and while doing so were told that 2 other units in the strata building had had bed bugs.

The rental unit was heat treated on April 19, 2014.

On May 1, 2013 the tenants emailed the landlord; they explained the initial treatment and the difficulty in determining where the pests could have originated. The tenants indicated that they did not think the strata would compensate them for the cost of treatment and that from their research the tenants believed the landlord should be responsible for insect control. The tenants said they were not negligent and that the treatment method they chose was the most effective way to eradicate the pests.

Shortly after the heat treatment was completed the tenants were away for a period of time. On May 4, 2013 the tenants returned and on May 17, 2013 another bed bug was found on the desk. The tenants were able to have the unit heat treated a 2nd time, as there was 30 day guarantee provided by the pest control company. The tenants asked to have the wall along the desk given extra treatment, as it appeared the bugs might be living in that wall.

On May 18, 2013 the tenants told the landlord another bed bug had been found and that treatment was again completed.

On July 3, 2013 the tenants asked the landlord if she had heard anything from the strata in relation to compensation for costs. The landlord replied indicating the strata were not responsible and that the tenants should use their tenant's insurance for the pest control costs. The tenants reminded the landlord that pest control was her responsibility. On July 11, 2013 the landlord sent the tenants a fact sheet on pest control and pets; which provided preventative measures for pests.

On July 22, 2013 the tenants again asked about possible assistance with the cost of pest control; the landlord said the strata would consider this at an upcoming meeting.

On July 23, 2013 the landlord was provided with a copy of the pest control treatment invoice and the receipts for the mattress covers and bed bug traps. The tenants made a final request for financial compensation on November 13, 2013.

The tenants said that the landlord never investigated the report of pests and that initially they misunderstood who was responsible for the cost of treatment. Once the tenants realized the landlord was responsible and they made the request for compensation the landlord refused to assist.

Verification of the costs claimed was supplied by the tenants.

The tenants remained in the unit until October 1, 2013, with no further pest problems.

There was no dispute that the tenants gave the landlord \$50.00 as a key deposit. The landlord told the tenants, via email sent on September 10, 2011 that they could obtain the key from a specific strata board member. The tenants obtained the key and at the end of the tenancy that key was returned to the board member, not the landlord. The tenants have requested return of the key deposit.

The landlord said she did not give the tenants permission to proceed with pest control; that she had only suggested they could possibly hire an exterminator. The landlord and tenant had some telephone conversations and she never told the tenants they could proceed with treatment at the landlord's cost.

The landlord confirmed that she did not go to the unit to investigate the pest report and that she did not take any steps to contact a pest control company. The landlord said that the tenants decided to hire the pest control company and that they did not have the right to expect the landlord to pay this cost.

The landlord said that the strata council had a pest control company enter the unit in April 2013, at which time no bed bugs were located.

The landlord said she now does not have the key that she paid for. The landlord has not asked the board member to give her the key which was returned by the tenants. The tenants said that the landlord has not paid the strata for the key.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There was no dispute that bed bugs were located in the unit. Once the landlord was notified of the need to investigate the landlord did suggest that the tenants should clean and possibly hire a pest control company. The landlord took no steps to investigate the report and essentially left the tenants to deal with the pest problem. I find, on the balance of probabilities, that the suggestions made by the landlord would have had no effect on an existing infestation; which required 2 treatments by a pest control company.

Section 32 of the Act provides, in part:

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.

From the evidence before me there had been reported bed bug problems within the building; this is supported by the strata council attempts to investigate. It is not up to a tenant to communicate with a strata council; a tenant communicates with the landlord, who has the authority to communicate with the strata. Only if the strata had been assigned as the landlord's agent should a tenant expect assistance from the strata or communicate with the strata. The strata had not been assigned as the landlords agent; leaving the landlord responsible for pest control reports in her unit.

Residential Tenancy Branch (RTB) policy suggests:

a landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

In the absence of evidence that the tenants were somehow responsible for the bed bug infestation, I find that the landlord erred when she failed to adequately respond to the report of insects in the unit. I find it is likely that the insects travelled into the rental unit via the wall by the tenant's desk; although the source of the infestation has not been confirmed. Once the report of insects was made the landlord had a responsibility to investigate the report and arrange appropriate pest control. When the landlord indicated that the tenants should possibly hire a pest control company it appears that both parties were unclear of their responsibilities under the Act. The tenants proceeded, in good faith, to eradicate the insects from the landlord's property. However, I find that nothing changes the fact that the landlord would have incurred costs to eradicate the insects if she had assumed her responsibilities in accordance with the Act and policy.

The landlord's expectation the tenant's insurance would cover the costs is misplaced. I find RTB policy takes a reasonable stance and that the landlord must assume the cost of the pest control, as claimed. If the landlord had taken immediate steps to assume

responsibility for the pest control she could have chosen a pest control company and made her own decisions regarding the method of treatment. As it was, the tenants chose a highly effective method of treatment, which, after the 2nd treatment, eliminated the insects and protected the landlord's property and the strata's other occupants from an increased infestation.

Therefore, I find that the tenants are entitled to compensation in the sum of \$1,155.00 for pest control costs.

In relation to the mattress covers and pest traps, as the landlord had not yet been informed of the suspected problem prior to the purchase of those items, I find that portion of the claim is dismissed. A landlord should be contacted and given a reasonable period of time to take steps required by the Act and suggested by policy. It could be assumed the landlord would have refused to provide the covers and traps, but compensation cannot be made based on assumption.

There is no doubt that the tenants paid a \$50.00 deposit for a 2nd key. Whether the landlord gave those funds to the strata is not relevant. The tenants returned the key to the strata member who provided the key. The landlord understands that individual has her key and she is free to request its return. Therefore, as the tenants paid a key deposit and returned the key to the individual who issued them the key, I find that the tenants are entitled to return of the key deposit in the sum of \$50.00. The tenants did not purchase the key for the landlord; they only paid a deposit.

Mailing costs are considered part of hearing preparation. The only cost considered is the filing fee. Therefore, the claim for mail is dismissed.

Therefore, the tenants are entitled to the following compensation:

	Claimed	Accepted
Pest traps	\$47.04	0
Mattress covers	210.57	0
Pest control treatment	1,155.00	1,155.00
Cost of key	50.00	50.00
Mail cost	10.00	0
TOTAL	\$1,472.61	\$1,205.00

I find that the tenant's application has merit and that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant's a monetary Order in the sum of \$1,255.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to compensation for pest control costs and return of the key deposit.

The balance of the claim is dismissed.

The tenants are entitled to filing fee costs.

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 14, 2014

Residential Tenancy Branch

