



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, RSP, FF

Introduction

This hearing dealt with an application by the tenant for orders compelling the landlord to comply with the Act, regulation or tenancy agreement; to make repairs; to provide services or facilities; and to pay monetary compensation to the tenant. Both parties appeared and had an opportunity to be heard.

The tenant had amended her application to include a claim for compensation for harassment by the landlord. The amended claim had been sent to the landlord by registered mail just eight days before the hearing. As of the date of the hearing the landlord had not yet picked up the registered mail.

At the beginning of the hearing I advised the parties that pursuant to Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* I was severing the tenant's claim for compensation for harassment by the landlord from the tenant's claim for damages related to a bedbug infestation. The claim for harassment was dismissed with leave to re-apply. The hearing was limited to the issues resulting from the presence of bedbugs only.

Issue(s) to be Decided

- Should a monetary order in favour of the tenant be made and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?

Background and Evidence

This month-to-month tenancy commenced February 11, 2011. The monthly rent of \$975.00 is due on the first day of the month.

The rental unit is a three story townhouse. There are six units in this complex. The tenant lives in #3. The six units are in one continuous row.

The landlord, who has owned this property since 1978, testified that it was built in or about 1976. Each unit is of frame construction. The walls between each unit are built of concrete block with a plastered finish. The concrete walls extend from the roof to the basement floor. There are no electrical wires or other conduits passing through the concrete walls. There are no electrical outlets in these walls. All the wiring is brought from outside into each individual unit.

The tenant lives in the unit with her 13 year daughter, 8 year old son, and mother. Her son often crawls into bed with the tenant to sleep. Starting in March or April of 2014 it was apparent that her son was being bitten by something. However, he was the only one in the family experiencing these bites. Her son spends lots of time at his father's house, who kept saying to the tenant that "something is happening at your house".

On May 2 the tenant had a pest control company inspect her unit. Their report said: "located live bugs in upper main bedroom on mattress. No other signs @ this visit anywhere else in unit. Recommend 1 full room & preventative baseboards in other areas."

The cost for this visit was \$110.00, which the tenant paid.

The tenant testified that the only bugs found were in her bed and they were at all different ages – from fully mature adults to a nest with eggs.

The tenant double bagged and threw out her bed, bedding and pillows. She also proceeded to spend several days washing and cleaning everything that was upstairs.

On May 7 the pest control company returned. Their report states: "Treated 1 room & baseboards on upper floor and in living room & dusted plugs and switches. Return in 2 weeks, prepaid, w/ this visit."

The company did return on May 21. Their report states: "Re-treated baseboards in unit and re-checked other 2 rooms for issues, no live insects noted anywhere during treatments. Recommend continued visual inspections and vacuuming."

The cost for the two treatments was \$445.00 which was paid by the tenant.

A few days after the tenant disposed of her bed she saw the residents of #1 putting a mattress in a truck. After a conversation with the resident of #2 the tenant spoke to the residents of #1. They told her they had bedbugs; that they had reported the problem to the landlord; and that he refused to pay for anything.

In his testimony the landlord confirmed that #1 does have bedbugs. They had been treated unsuccessfully by one company. #1 has since been treated by the same company that was hired by the tenant. They appear to be achieving more success. He testified that he is working with these tenants.

The landlord's picked up the rent from the tenant on May 2. For reasons which she explained in the hearing the tenant did not report the presence of bedbugs to the landlord at that time. It was not until May 11 that the tenant told the landlord she had found bedbugs in her unit. Both parties report this conversation as being unpleasant.

The tenant argues that #2 had bedbugs and when that unit was empty the bugs migrated to her unit. In support of her position she submitted the following evidence:

- A letter from the previous tenant of #2. This tenant says they found bedbugs in #2 in September. When they reported the issue to the landlord he told them it was their responsibility. There is no mention of these tenants doing anything about bedbugs, including telling their neighbours.
- Photographs showing a crack in the wall between the infected bedroom of #3 and #2.
- Public information from the Internet describing how bedbugs can hide in the smallest of cracks and crevices and how they can go for long periods of time without feeding.

The landlord's evidence is that #2 was vacated on September 30, 2013. Among other issues there was a flea infestation in that unit. The landlord was not looking for bedbugs and did not see any. He says that he spoke to a pest control company at this time. The landlord bought a powdered bug killer for fleas, bedbugs and other crawling insects. They dusted all three floors of the townhouse. The next day they ripped out all of the carpet and underlay. The landlord continued to spray and dust almost daily October 1 to October 21 when the new carpets were installed. The landlord expressed the opinion that after this prolonged course of treatment no pest remained living.

The landlord also stated that this May is the first time they have had bedbugs reported to them. He testified that the previous tenant in #2 and the tenant were friends and spent a lot of time with each other and each other's homes.

On December 1 a new tenant moved into #2. She filed several letters in evidence stating that since she moved in she has not detected any sign of bedbugs in her unit.

On July 19 the tenant found bedbugs in her daughter's bed. She double bagged the bed and tried to notify the landlord of the situation.

Analysis

Section 32 of the *Residential Tenancy Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

To establish a claim against the landlord the tenant must show, on a balance of probabilities, that the landlord breached the duty owed to her and that loss claimed is a foreseeable result of the wrong.

When a rental unit is damaged by an unforeseen event, such as fire, flooding or pest infestation, it is upon the landlord to repair the rental unit and residential property. Tenant's insurance generally covers damages or loss a tenant may incur as a result of an unforeseen event. Damage to a tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

Consequently, it is upon the tenant to show that the landlord was negligent in addressing the bedbug situation. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in unintended injury to another party.

In coming to my decision I have considered conflicting factors.

On the one hand:

- Bed bugs normally move from one unit to adjacent units.
- The style of construction of the fire walls between the units is no guarantee that bedbugs will not travel from one unit to another. Over the past 35 years or more the walls could have shifted and created small cracks.
- Merely sprinkling insect powder or Diatomaceous Earth in an infected unit is not usually an effective treatment for bed bugs.

On the other hand:

- The current resident of #2 has not experienced or noted any sign of bed bugs in her unit. If the landlord's treatment had been unsuccessful, one would have expected some evidence of bed bug activity once a new human moved back into the unit.

- The tenant did not experience any evidence of bed bug activity in her unit until more than six months after #2 was vacated.
- Bed bugs are endemic in the Lower Mainland and can be brought into anyone's home from multiple sources.

In coming to my decision I have accepted the landlord's sworn oral testimony that he had not heard about bed bugs in #2 before that tenant moved out over the previous tenant's unsworn letter. If the landlord had known about the bed bugs I think he would have looked for them specifically and made inquiries about eradicating them while he was remediating the unit.

After considering all the evidence, I find that the tenant has not tipped the balance of probabilities in favour of a finding that the sole source of bedbugs in her unit is migration from #2 and that the presence of bedbugs in her unit has been caused by the negligence of the landlord. However, I also want to emphasize that there is no evidence that any negligence or lack of care by the tenant was the cause of bedbugs in her unit or that she has not been diligent in her efforts to eradicate them.

In the case of a bed bug infestation, where a tenant's liability or negligence is not an issue, the landlord takes on the cost of controlling or eliminating the infestation and the tenant bears the inconvenience and discomfort of having the bed bugs in the unit. In most cases each party experiences mutual loss due to a pest for which neither party has control over.

The landlord is responsible for the costs of the inspection and treatments by the pest control company, a total of \$555.00.

I find that the landlord is not responsible for reimbursing the tenant for the cost of doing laundry in relation to bedbug treatments, and other expenses such as mattress bags, laundry soap, new bedding, or furniture as these are expenses incurred as a result of the inconvenience of the pest and not a result of the landlord being negligent in his obligation to maintain the rental unit. It is for the same reason that the tenant's claim for loss of income is denied.

I also deny the tenant's claim for loss of quiet enjoyment related to the infestation. While I appreciate the work created by a bedbug infestation and the stress and psychological impact of experiencing such an insect infestation, this is a result of an occurrence that was not in the control of the tenant or the landlord.

The landlord is responsible for ensuring that the rental unit is inspected and treated by a qualified pest control company on an ongoing basis and for paying for the costs of such services. If the landlord fails to do so, that lack of action may be considered negligent in the future now that the landlord knows of the situation and his legal obligations. No formal repair order will be made at this time but, if necessary, the tenant may always apply again for a repair order in the future.

As the tenant was partially successful on her application I grant her request for reimbursement from the landlord of the \$50.00 fee she paid to file this application.

Conclusion

I find that the tenant has established a total monetary claim of \$605.00, as detailed above. Pursuant to section 72 that amount may be deducted from the next rent payment due to the landlord.

In recognition of the possibility that the tenancy may have ended by the time the parties receive this decision a monetary order in the amount of \$60.00 has also been granted to the tenant. If necessary, this order may be filed in the Small Claims 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: August 26, 2014

Residential Tenancy Branch

