



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding York House Holdings Ltd. aka Five Mile Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has 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.

Preliminary Matters

The landlord did not receive all of the tenant's evidence, which the tenant said was left at their head office on September 8, 2014. The landlord confirmed that the person who apparently accepted the evidence works for the landlord, but that evidence was not given to the agent who was present at the hearing. The landlord said that she accepted the tenant had made the submission and that they were willing to proceed with the hearing.

The tenant confirmed receipt of the landlord's evidence within the required time-frame.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$4,705.00 for the loss of furniture, personal property, laundry, dry cleaning and moving expenses?

Background and Evidence

The tenancy commenced on May 1, 2013; as a fixed term ending May 2014. Rent in the sum of \$875.00 was due on the first day of each month.

In August 2014 the tenant gave proper notice to end the tenancy; he paid all of September rent and vacated in mid-September, 2014. A copy of the tenant's notice, supplied as evidence, stated that he was moving out as the result of a bed bug infestation in the building. The note stated the tenant had become aware of bed bugs in June, when he found out his neighbour had a problem. Subsequent investigation by pest control determined the tenant's unit was clear of bugs, but it did become infested. The problem had continued for a number of months and had not been eradicated.

There was no dispute that bed bugs had been a problem in the building. The landlord supplied thirty-one pages of evidence that consisted of numerous professional pest control company reports issued for the building.

The tenant first reported a bed bug in his unit in mid to late June 2014; he could not recall the date. The tenant's unit was checked by a canine pest control service and no bed bugs were located in his unit.

On August 9, 2014 the tenant found 6 bed bugs; they were located in his bed in the middle of the night. The next day was a Sunday and the landlord could not be reached. On August 11, 2014 the tenant spoke to the landlord's agent. On August 14, 2014 the pest control completed a canine inspection of the unit in his home and bed bugs were located. Eight days later, on August 22, 2014, pest control treatment was completed. Another treatment took place on August 29, 2014 and on September 5, 2014 an inspection determined the unit was free of bed bugs.

The tenant said he was told by the pest control technician that they could not guarantee bugs would not reappear and that his mattress would be free of bed bugs. The tenant purchased a cover for his nearly new mattress, but he could not be sure it did not contain bed bugs and eggs. When pest control treated his unit they found 100's of eggs. The tenant gave notice to end the tenancy based on the inability of the technician to give him a guarantee the unit would remain bed bug free.

The landlord provided records of pest control steps taken in the building, as follows:

- January 24, 2014 – 18 units inspected; 4 active with bed bugs, the tenants unit was clear, the adjoining unit was not;
- March 4, 2014 - - tenants unit was clear; the adjoining was not;
- June 27, 2014 – twenty units inspected, 4 units active (including the adjoining unit);
- August 14, 2014 – 9 units inspected – 2 bed bugs located in tenant's unit, evidence of bugs in the adjoining unit;

- August 22, 2014 – treatment in tenant's unit and adjoining unit, plus 2 other units; report indicates tenants mattress, box spring, frame, side table, dresser and 2 chairs steam cleaned, live, eggs, casing and droppings on bed only;
- August 29, 2014 – 1 bed bug found in tenants unit, 2 in adjoining unit, furniture steamed again;
- September 5, 2014 – twenty units inspected by canine, 1 bed bug located, no hits in tenant's unit;
- September 25, 2014 – preventative treatment in tenant's unit, no bed bug activity;
- October 2, 2014 – further inspections and treatments to one other unit in building; tenant's old unit clear of bed bugs; and
- October 10, 2014 – 6 units inspected, unit clear of bed bugs.

A report for November 18, 2014 was also supplied; tenant's old unit was clear of bed bugs.

The landlord said that they use a very reputable pest control company. When a problem is reported the company completes a canine inspection. Within one week a treatment is completed. There are 2 rounds of treatment, 1 week apart. Then another canine inspection is completed. Tenants are given notice of the inspections and treatment and must properly prepare their unit.

The suite adjoining the tenants unit had a repeated problem; those occupants fully complied with all treatments and the required preparation for treatment. Eventually the pest control company asked the occupants of the adjoining unit to remove certain pieces of furniture that were deemed infested. The occupants complied and eventually the treatments eliminated the bed bugs; although follow-up inspections are carried out.

The landlord never told the tenant to remove any of his furniture; that is not her responsibility. It is up to the pest control company to make that determination; however they did not make that recommendation for the tenant's unit.

The tenant said he had to replace his mattress. A receipt for the mattress cover purchased in August 2014, in the sum of \$112.00 and the mattress, purchased in March 2013 (\$1,622.00) was supplied as evidence. The tenant incurred costs to replace a chest of drawers, 2 chairs, a rocker, end tables and a sofa. Items had to be dry-cleaned and moving expenses totaled \$350.00.

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.

I have considered whether the tenant has proven, on the balance of probabilities, that the landlord breached the Act. 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.

There was no dispute that the building had a bed bug problem and that the unit next to the tenant's was experiencing some on-going pest issues. The landlord has supplied evidence of repeated pest control measures which were commenced well before the tenant made any report of bugs in his unit. Before any bugs were found in the tenant's unit it was being checked for pests. There was delay of 8 days between the time a canine inspection located the first bugs in the tenant's unit and the time of the initial treatment; however, I do not find that delay; 1 day beyond the standard promised by the pest control company, forms any neglect on the part of the landlord.

From the evidence before me I find, on the balance of probabilities that the landlord was adequately responding to reports of bed bugs. The landlord was having preventative inspection measures completed and contracted with the professional pest control company to take necessary action. The treatments appear to have been working, with the numbers of affected units being limited and declining over time. Monitoring of units not reported to be having problems also points to mitigation by the landlord.

There was no evidence before me that the occupants of the adjoining unit were not cooperating with treatments. There was also no evidence that the landlord was not taking all available steps to respond to the pest issues.

There is no doubt the tenant was upset and disturbed by the presence of pests in his unit; however, the question of compensation is based upon proof the landlord breached their obligation to repair and maintain. From the evidence before me I find that the tenant has not proven, on the balance of probabilities, that the landlord breached the Act. The landlord had pest control carry out the usual inspections and treatments and by the time the tenant gave notice to end the tenancy there was evidence that treatment was working. Within one week of giving notice the pest control company could not locate any pests in the unit. While no guarantees could be made that pests would not return, the landlord has shown they had a habit of responding properly when pests are reported by a tenant or located through routine inspections. Based on this determination I find that there is no basis for a claim against the landlord.

Therefore, in the absence of evidence that the landlord breached the Act, I find that the claim is dismissed.

Conclusion

The claim is dismissed.

This decision is final and binding and 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: March 30, 2015

Residential Tenancy Branch

