



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was personally served on the landlord on February 25, 2015.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?

Background and Evidence

The tenancy began on August 1, 2011. The tenancy agreement provided that the tenant(s) would pay rent of \$667.50 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$337.50 on August 1, 2011. The tenancy ended on February 1, 2015. The tenant acknowledges that he owes the landlord \$10,350 in outstanding rent.

The tenant testified the landlord was well aware of the presence of bedbugs in the rental unit but failed to do anything about it. He testified that early in the tenancy he showed the landlord the bites on him and blood from the bites. The landlord denies this. He testified the tenant never advised him there was a bedbug problem. There are 48 units in the rental property and he treats the problem regularly when necessary. The landlord pointed out the tenant only advised him of the problem after he had vacated the rental unit.

The Application for Dispute Resolution filed by the tenant seeks compensation in the sum of \$13,500 alleging that he had to throw out many personal belongings because of a bedbug infestation. He placed his goods in storage. A short time later he received a letter from the storage facility they were terminating his tenancy immediately because of the bedbugs. The storage company disposed of his goods.

The tenant testified that landlord illegally entered the rental unit in order to regain possession when they did not have a Writ of Possession.

The tenant testified he paid the landlord rent in the sum of \$18,435 over a 3 ½ year period and that the landlord would not have received this amount if he did not suffer from continuous bed bug bites over the period. The Monetary Order Worksheet claims the following:

- Upright piano - \$5000
- Stereo speakers, CD player, CD collection, TV, DVD movies - \$3000
- Clothing (including 2 leather coats @ \$500 each) - \$2500
- Furniture – couch, lazyboy, waterbed frame, stereo, TV cabinet - \$2000
- Pots, pans, dishes, crystal glasses etc. - \$500
- Pictures, ornaments, books, legal docs. - \$500
 - Total \$13,500.

The landlord disputes the tenant's claim on the following basis:

- The tenant failed to advise him he had a bedbug problem. He owns several properties and they regularly treat for many different pests.
- The tenant removed his belongings and only complained of the bedbug problem several weeks later.
- The landlord stated he has the piano and is waiting for the tenant to remove it. The tenant stated he does not intend to remove it as it is infested with bedbugs.

Analysis:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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 carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that in order to justify payment of damages under sections 67 of the Act, the Applicant tenant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in losses to the Applicant pursuant to Section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss, in this case the tenants, bears the burden of

proof and the evidence furnished by the Applicant tenants must satisfy each component of the test below:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

I determined the tenant has failed to prove he is entitled to compensation for his loss and damages caused by the bedbugs for the following reasons:

- I determined the tenant failed to prove he sufficiently advised the landlord of the bedbug problem in his rental unit. The tenant alleged the landlord was aware of the problem and testified he told the landlord early in the tenancy. The landlord denies the tenant told him of a problem in his unit. Apart from this alleged notification the tenant did not provide evidence of any other notifications. It is undisputed that the tenant failed to give the landlord a notice in writing there was a bedbug problem. He failed to apply to the Residential Tenancy Branch for an order that the bedbugs be treated. I accept the evidence of the landlord that he continuously treats for bedbugs in his rental property when required. I determined the tenant failed to give the landlord notice of the problem. As a result the tenant has failed to mitigate his losses as the landlord has not been given an opportunity to rectify the situation.
- The tenant testified his belongings had to be thrown. He has failed to provide any evidence as to why some or all of those belongings could not be treated and therefore limit his loss. The tenant has failed to mitigate his loss.

- The tenant failed to provide any evidence as to quantify the loss. I accept the tenant's submission that he may not have the receipts when the goods were purchased. However, there is no reason why he did not produce brochures, catalogues, advertisements showing similar goods. For example the tenant alleges he lost his piano which he is claiming \$5000. He testified it was given to him from a friend of a friend. However, there is no evidence presented as to the value of the piano. .

As a result I dismissed the tenant's claim for loss of personal property and damage due to a bedbug problem.

However, I determined the landlord has breached the tenant's rights when the landlord gained possession of the rental unit without first obtaining a Writ of Possession from the Supreme Court of British Columbia. There were many belongings in the rental unit. The landlord was in communication with the tenant who was asking for additional time. A reasonable landlord should have been aware the tenant had not abandoned the rental unit. The tenant has not provided any evidence to quantify this loss. Rather than dismissing this claim I determined the tenant is entitled to nominal damage in the sum of \$100.

Section 72 of the Residential Tenancy Act provides as follows:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

**(a) in the case of payment from a landlord to a tenant,
from any rent due to the landlord, and**

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The tenant acknowledged that he owes rent arrears in the sum of \$10,350. I ordered that the \$100 monetary award be deducted from the rent arrears leaving a balance of \$10,250. Had the tenant greater success that monetary award would have been applied to outstanding rent.

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: May 26, 2015

Residential Tenancy Branch

