



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, RR, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent, a monetary order, and an order permitting retention of the security deposit in partial satisfaction of the claim. The other was the tenants' application for orders setting aside the 10 Day Notice to End Tenancy, allowing them more time in which to make that application, granting the tenants compensation or damage or loss, and reducing the rent for services or facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard.

The tenants had a filed a one page document as part of their evidence after the time limit for doing so had passed. They had not served a copy on the landlord so the document was not received into evidence.

Issue(s) to be Decided

- Should the tenants be granted an extension of time in which to file this application?
- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated April 10, 2015 valid?
- Should either the landlord or the tenants be granted a monetary order and, if so, in what amount?
- Should the rent be reduced and, if so, in what amount and on what terms?

Background and Evidence

The rental unit is one of six apartments on the ninth floor of a nine story apartment building.

This one year fixed term tenancy commenced June 15, 2014. The monthly rent of \$1250.00 is due on the first day of the month. The tenants paid a security deposit of \$625.00. As part of the tenancy agreement the tenants received a 50% discount on the third month's rent.

The landlord testified that they received the first report of bedbugs in the building in February from the unit across the hall from the rental unit. They had a qualified pest control company treat the problem immediately. The pest control company told them it was only necessary to spray the adjoining unit, which they did, but no other units.

On March 26 the tenants reported bedbugs in their unit.

The landlord called the pest control company and was advised that the first available appointment was March 31.

The landlord gave the tenants the preparation check list provided by the pest control company. The checklist contains the following information: "It is necessary for you and your pets to vacate the premises during the service and not to re-enter until at least 4 hours after treatment. . . Persons with underlying health conditions should consult their family physician where they have concerns regarding re-entry time."

The unit was treated on March 31. A follow-up treatment was scheduled for and completed on April 10.

A canine inspection of all the units on the ninth floor was conducted on April 13. The only bedbug activity noted was in a dresser in the rental unit. The tenants were told to seal it; the tenant testified that he wrapped it in shrink wrap.

A follow-up inspection was conducted in the rental unit on April 24. The inspection was clear. The tenant testified that there has not been any sign of bedbugs since the last treatment.

The tenants withheld the April and May rent. They say they withheld the rent because the landlord did not advise them of the presence of bedbugs on their floor and, if the landlord had done so, they could have taken some precautions.

On April 10 the landlord issued and served a 10 Day Notice to End Tenancy for Non-Payment of Rent. The notice specifically states under "Important Fact" that "The tenant is not entitled to withhold rent unless ordered by an arbitrator."

The tenants did not file this application disputing the notice to end tenancy until April 16.

The tenant testified that he started to feel ill on April 4 or 5 but became very ill after the treatment on April 10. He testified that he was taken to hospital by ambulance on April 10 and was in the hospital – very ill – for two days. He was released from hospital on April 12. The tenant did not file a doctor's letter or any other documentation describing his medical problem and its' likely cause, or even confirming his stay in hospital.

The tenant testified that he went to the Residential Tenancy Branch on April 14 to file this application for dispute resolution but was so sick the staff told him to go home. The same thing happened on April 15. It was only on April 16 that he filed the application.

When asked why the other two tenants could not file the application the tenant was not able to provide any explanation.

When asked if he had any pre-existing medical condition the tenant advised that he is ex-military and suffers from PTSD.

Analysis

Should the tenants be granted an extension of time in which to file this application?

Section 66(1) of the *Residential Tenancy Act* allows an arbitrator to extend the time limits established by the Act only in exceptional circumstances.

An exceptional circumstance might be that the party was in the hospital at all material times. Evidence which could be presented to show that the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating the party's condition prevented their contacting another person to act on their behalf.

Although one tenant offered an explanation – albeit an explanation unsupported by any documentation – there was no explanation offered for why either of the other two tenants could not file the application for dispute resolution within the five day time limit.

The tenants' application for an order extending the time to file this application for dispute resolution is dismissed.

Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated April 10, 2015 valid?

Even if I had granted the application for an extension of time I would have dismissed the tenants' application for an order setting aside the notice to end tenancy. Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent. The tenants had no right to withhold the rent.

Accordingly, I find that the landlord is entitled to an order of possession effective two days after service on the tenants.

Should the tenants be granted a monetary order, including a reduction of rent and, if so, in what amount?

Section 32 of the *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.

As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*, a claim may be made for a breach of a statutory duty under the law of negligence. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. The claimant must show that the respondent breached the duty of care owed to him or her and that the loss claimed was 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 up to the landlord to repair the rental unit and residential property. Tenant's insurance generally covers damages or loss the tenant incurs as a result of the 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.

In the case of a bedbug infestation, where a tenant's liability or negligence is not an issue, the landlord bears the cost of controlling or eliminating the infestation and the tenant bears the inconvenience and discomfort of having bedbugs in the unit. In most cases, each party experiences a loss due to a pest neither party has any control over.

Bedbugs are a widespread nuisance on the lower mainland. Because of its' attributes, it is often very difficult to identify the origin of the bedbugs in a unit. They may have arrived on a piece of used furniture, in a library book, or on a suitcase after a trip, or they may have travelled from an adjoining unit. One of the particular challenges in a multi-unit building is that not all people react to bedbug bites, so a severe infestation may exist in a unit but it is never reported or treated.

A landlord's responsibility is to have a qualified pest control company treat the rental unit as soon as possible after the bedbugs are reported, to follow the direction of the pest control company; and to pay the bill of the pest control company. The tenant's responsibility is to take common sense steps to reduce the chances of bedbugs being introduced to the rental unit; to notify the landlord promptly of any bedbug sightings; and to follow the direction of the pest control company.

In this case the evidence is that the landlord arranged for treatment as soon as a problem was reported and followed the directions of the pest control company. The landlord bears no responsibility for any cost or inconvenience the tenants may suffer as a result of the bedbugs in their unit.

The tenant also claimed compensation for health difficulties experienced as a result of the chemicals used in the bedbug treatment. This claim was unsupported by any medical evidence and is dismissed.

Should the landlord be granted a monetary order and, if so, in what amount?

The landlord has established a total monetary claim of \$2600.00 comprised of unpaid rent for April and May in the amount of \$2500.00; late fees for April and May in the amount of \$50.00;

and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1975.00.

Conclusion

- a. The tenants' application is dismissed in full.
- b. The landlord is granted an order of possession effective two days after service. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- c. The landlord is granted a monetary order. If necessary, this order may be file in 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: June 08, 2015

Residential Tenancy Branch