



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

At the hearing, the tenant withdrew that part of her claim for compensation for October 2013 as she did not reside in the rental unit during that month.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2011 and ended on September 30, 2013 and that the tenant's monthly rent was set at \$950.00 per month.

The tenant testified that when she moved into the rental unit, she noticed that there were rat droppings in the basement. She stated that she advised the landlords of the issue but did not pursue it until April 2013 when the rats had moved their way upstairs. She claimed that at that time, she complained and in June, a pest control company attended the unit and trapped several rats. The tenant claimed that the rat problem continued throughout her tenancy and that the pest control company's attempts to eliminate the infestation were inadequate. She stated that she suffered from flea bites which she believed came from the rats, stated that her friends and family members would not visit her because of concerns regarding the infestation, she had to endure an unpleasant odour and live in unhygienic conditions and was unable to sleep soundly. The tenant seeks a 10% reduction of her rent for each of the 6 months (April – September) in which she experienced a problem with rats.

The landlords testified that the first time they learned that there was a rat problem was on May 4, 2013. They did not address the problem at that time, but when the tenant complained again on May 31 and showed them rat droppings, they contacted 2 pest control companies to inspect the unit and provide estimates. They stated that the technician they eventually hired, stepped in dog feces while in the unit and argued that if the tenant had to live in unhygienic conditions, it is because she had several dogs who she allowed to urinate and defecate throughout the home and because she did not properly clean the home and left food throughout the home. They claim that she also threw food on the floor for her dogs, which would have attracted rats. The landlords argued that if the tenant experienced flea bites, it was more likely that the fleas came from her dogs rather than from rats. The landlords acknowledged that the unit has been infested by rats in the past, but the last infestation was dealt with at least one year prior to the commencement of this tenancy.

The technician who treated the unit appeared at the hearing to testify. The technician confirmed that he stepped in dog feces the first time he visited the home and that one of the tenant's dogs tried to bite him and stated that while the home was not neat, in his view the only feature of the home which would have made it more attractive to rats was the fact that the tenant had a significant amount of belongings which provided nesting places. The technician characterized the infestation as typical and said it was not, in his experience, exceptionally bad. He testified that in his practice he emphasizes making the unit pest proof, which he did to the best of his ability on the first visit by finding and sealing points of access. He described locating several entry holes and covering them with ¼" mesh.

The technician testified that on June 5 he placed 6 traps throughout the home, 3 of which were under furniture. He stated that he always sets 6 traps for this level of infestation. The technician testified that as per his usual practice, he returned to the unit one week later to find 2 dead rats and testified that he attended the home up to 5 times and caught 5 rats in total. He stated that on his second visit, he noticed that he missed one point of access, which was in the opening for a pocket door. He testified that he informed the landlords of the issue and the landlords advised that they would perform the repair. When he returned to the unit on his next visit, he inspected the repair and stated that he considered the repair to be sufficient. He stated that after that repair, no more rats were seen upstairs. The technician stated that the date of his last visit was August 13 and that he was not advised of further rat problems after that date. The tenant asked the technician why a bylaw officer would have seen rat droppings in the unit on August 14 and the technician replied that the droppings had likely been there for a while and did not indicate a continuing infestation.

The tenant insisted that the technician did not place more than 2 traps in the unit and stated that she was certain he did not attend the unit on more than 2 occasions. She further stated that in her opinion, the opening in the pocket door was not adequately blocked.

Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 32 of the Act requires the landlords to provide and maintain the property in a state of repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant claimed that she first notified the landlords about rats in the basement in August 2011, just one month after she moved into the unit, but did not pursue the issue because they were not affecting her living area on the upper floor. The tenant provided no evidence to corroborate her claim that she advised the landlord about the rats prior to May 4, 2013. In the absence of corroborating evidence and as the landlords have stated that May 4 was the earliest date they were made aware of the infestation, I find that the tenant did not inform the landlord about the rats until May 4.

There is no suggestion that the landlords caused the infestation either through their direct action or through their negligence, but when they were made aware of the problem, they bore the burden of acting reasonably to address the issue. The landlords in this case knew that the home had suffered from previous infestations. I find that given the history of the unit, the landlords should have acted quickly to secure a pest control company to treat the unit. The landlords testified that they first learned of the infestation on May 4 but chose not to act until almost 4 weeks later when the tenant complained a second time. I find that the landlords failed to act reasonably when they learned of the infestation and therefore failed to comply with their obligation under

section 32 of the Act. I find that the tenant has proven the first element of the test outlined above.

The schedule to the Residential Tenancy Regulations provides standard terms which are part of every residential tenancy agreement in BC. Section 8(1) of that schedule mirrors section 32 of the Act. The tenant was contractually entitled to a rental unit in which repair and maintenance issues were dealt with in a reasonable time frame. I have found that the landlords failed to act with reasonable speed to address the rat issue and therefore, I find that the tenant paid for a service which she did not receive. Further, I find that the tenant lost quiet enjoyment of the unit to which she is entitled under section 28 of the Act and section 11 of the aforementioned schedule as the presence of the rats created an unreasonable disturbance. I find that the loss the tenant suffered is compensable under the Act and the tenant has met the second element of the test.

Establishing the value of this loss is by its very nature arbitrary as there is no means by which to precisely calculate it. The tenant has claimed a refund of 10% of her rent for each of the months of April – September inclusive. I find that the scope of her loss is limited by the nature of the landlords' breach. Rodent activity is a part of life and the landlord's obligation is to act with reasonable speed to effectively treat an infestation. I have found that the tenant did not inform the landlord of the issue until May 4 and therefore I find that she is not entitled to compensation for the month of April as the landlords cannot be expected to treat an infestation of which they are unaware. I therefore dismiss the claim for compensation for April. I find that the landlords did not act to treat the infestation with reasonable speed and I find that the tenant is entitled to compensation for the month of May. I find that her claim for 10% of her rent for that month is reasonable and I award her \$95.00 which I accept to be the proven value of her loss and the third element of the test.

I find that in the months of June – September, the landlords were acting reasonably to treat the infestation by hiring a professional pest control company. I accept that the company worked within reasonable standards for that profession and in the absence of expert evidence to the contrary, I accept the technician's testimony that the infestation was not severe, that the rats were removed by mid-August and that their means of further access were removed.

I find that the tenant is not entitled to compensation for the months of June – September as the landlords were meeting their obligation to treat the unit and the treatment was ultimately successful. Further, I find that the tenant did not act reasonably to mitigate her losses.

The tenant claimed that she first noticed rats in the basement in 2011 and did not pursue the issue because they were not in her living area. I find it very likely that had the tenant reported the issue at that time, the rats could have been exterminated before they migrated to the upper floor. I find that this failure on the part of the tenant to report the issue worked against her to aggravate the matter and caused the pest control company to have to trap more rats than would have been the case had the company been called immediately when the rodents were discovered. I therefore find that the tenant has failed to meet the fourth element of the test as her delay likely extended the length of the treatment. I therefore dismiss the claim for compensation for June – September.

I award the tenant \$95.00 and I grant her a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$95.00.

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 6, 2015

Residential Tenancy Branch

