



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Fan Tower South Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The hearing did not conclude on the first scheduled date, and was adjourned to for a continuation of testimony and submissions. One of the named tenants attended on both scheduled dates accompanied by legal counsel. A representative of the landlord company also attended on both dates accompanied by legal counsel. My Interim Decision was provided to the parties after the first scheduled date, which also dealt with evidence. I had not received the landlord's evidentiary material prior to the commencement of the first day of the hearing, however with the consent of the parties, the hearing commenced with testimony of the tenant. The landlord's counsel had not concluded cross examination of the tenant by the end of the first scheduled date, and the landlord's evidentiary material was received by me prior to the second scheduled date, at which time the landlord's counsel continued with the cross examination.

Also, during the course of the hearing it was determined that photographs provided to the Residential Tenancy Branch as evidence by the tenant are in color but the copies provided to the landlord are in black and white. The tenant was ordered to provide to the landlord's counsel color copies of the photographs between the first scheduled date and the second scheduled date, and the landlord's counsel confirmed that was complied with.

No further issues with respect to service or delivery of documents or evidence were raised. All evidentiary material of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for a retroactive reduction in rent?

Background and Evidence

The tenant testified that this month-to-month tenancy began in mid-March, 2011 and the tenants still reside in the rental unit. Rent in the amount of \$750.00 per month was payable under the tenancy

agreement, but was reduced by the director to \$550.00 effective January, 2013 at previous Arbitration. Rent is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$375.00, not by a monetary payment but by the tenants completing work for the landlord.

The tenant further testified that the parties attended a hearing before the director on November 30, 2012 wherein the tenant was successful in obtaining a reduction in rent due to bed bugs in the rental unit. The order also provided monetary compensation to the tenant in the amount of \$1,600.00. A copy of the Decision has been provided and it is dated December 4, 2012. The tenant stated that page 3 of the Decision shows that the landlord's credibility was questionable and the Arbitrator found the tenant's testimony to be "forthright and believable." It states that the Arbitrator did not accept the landlord's testimony that no bed bug complaints were received until November, 2012, and that the likely reason the unit was sprayed for the pests was because the City got involved and ordered the landlord to eliminate the pest problem.

The bed bug problem has persisted, and the tenant has received about 20 notices from 2012 to present, the latest being June 12, 2015 wherein the onus is placed on the tenant to complete time consuming and expensive measures to prepare for bed-bug treatments. The tenant has provided copies of Notices of Pesticide Use, hand-written notices from the landlord, checklists for preparation for treatments, and testified that the tenants have to vacate the rental unit for a minimum of 4 hours each time. Another notice was received for August, 2015 and the rental unit was sprayed August 5, 2015 and the tenant was notified that spraying will be done again next week. The checklist also contains measures for post-treatment. It is almost impossible to do all of the things, such as removing electrical outlet covers, moving the fridge, and numerous other things repeatedly at the tenants' expense. He testified that the tenants followed it to the letter at the beginning, but the landlord didn't spray next door.

The rental unit still has bed bugs, and the tenant has placed sticky pads on each foot of the bed to keep the pests from getting onto it. After spraying, the tenant can see what's on the sticky pad, and is still catching bed bugs.

The tenant also testified that under the rental unit was an old vacant kitchen, and mice and rats have apparently infested the area for years. A photograph has been provided showing a mouse stuck to a sticky pad and the tenant testified that the photograph was taken under his computer in the living room. Another photograph shows another rodent caught beside the toilet in the rental unit and the tenant testified that he placed a screw driver in a hole to prevent any re-entry, but the pests dig a hole somewhere else. The landlord has known about it all along and has seen the screw driver. The landlord has provided the sticky pads, but aside from that, the tenant has had to deal with it himself. The latest mouse was caught 3 days ago in the living room under the entertainment centre. The tenant did refuse treatment that was scheduled for August 5, 2015 because the person had been there before, put a bunch of poison down and never returned to remove the poison or dead animals, so the tenant didn't want him back.

The tenant further testified that the rental unit also suffers leaks from water pipes in the ceiling and has provided 2 photographs of the hall ceiling tile which he testified has been replaced several times. The photographs show large water stains and the tenant testified that the T-bar holding the tiles in the bathroom is rusted showing how long the leak has been there. If the tile is removed, black mold is revealed. Water stains also exist in the living room ceiling which is where the tenant's computer and desk are situated. The landlord had a contractor attend the rental unit in 2013 who tiled the floor and behind

the stove but didn't do the wall and was ordered by a City inspector to rectify the mold issue and paint, but that's never been done. A copy of the letter of the City inspector has been provided and it is dated October 23, 2012. It states that the landlord is ordered to retain the services of a qualified pest control company and commence a program to eliminate the bed bug problem and submit an invoice to the District Property Use Inspector; to repair or replace the cover plate on the baseboard heater in the bedroom; to repair or replace the kitchen flooring; to clean, repair and paint the kitchen wall; and repair the ceiling openings to provide a continuous and complete surface finish. All action is to be completed by November 23, 2012. Another letter from the City dated January 21, 2013 has been provided which is addressed to the landlord ordering the landlord to continue to retain the services of a qualified pest control company to eliminate the bed bug problem and to clean, repair, patch and paint the kitchen wall, all of which are to be completed on or before February 4, 2013. The tenant testified that the kitchen wall needs to be finished, mold removed from the ceiling, and the kitchen was supposed to be painted. Calking has been completed in a very sloppy manner all through and is virtually impossible to clean due to its improper application. The landlord has provided new tiles to the tenant and the tenant has replaced them several times.

The tenant also testified that the landlord was refused entry to the rental unit on July 29, 2015 because the landlord failed to give proper notice to the tenant. There have not been regular inspections by the landlord, and the tenant testified that there has never been an inspection in the rental unit other than by a City inspector.

The tenant testified that the reduction in rent ordered previously contemplated a temporary reduction until proper repairs and attention were made by the landlord without any success, and the tenant seeks another reduction in rent retroactive to April, 2012 until the issues are corrected.

The landlord's representative (hereafter referred to as the landlord) testified that he has been employed by the landlord company for 13 years and is responsible for collecting rent and maintaining the building. The building is over 100 years old in the centre of China Town with 51 residential units. The ground floor of the heritage building is all commercial.

There were no bed bug issues prior to this tenancy. Copies of invoices and notices have been provided showing that other units have also been treated as well as those occupied by tenants who request treatment. On January 29, 2013 the landlord's counsel wrote a letter to the tenants on behalf of the landlord stating that preparation for treatment is the tenant's responsibility and expense while the landlord's responsibility is to pay for the treatment, and requests that the tenant immediately comply with the landlord's request to prepare the apartment for treatment.

The landlord switched companies that complete bed bug treatments because the tenant said he wasn't happy with the landlord's current company and recommended another.

In June or July, 2011 the landlord was made aware of the mouse problem and has arranged a yearly contract for a company to attend monthly for elimination and prevention. The last prevention treatment was refused by the tenant a couple of weeks ago because he doesn't like the company and said they don't do a good job so he would do it himself. The rental unit was last treated for rodents in October, 2014.

With respect to water leaks, plumbing and mold, the landlord testified that he does not recall when he became aware of the problem, and the landlord has had the same plumber for 10 years who would be called right away after the landlord received a complaint.

The landlord further testified that the repairs ordered by the City have been completed – the landlord did what the landlord was supposed to do; no fines have been imposed. Although monthly inspections have not been completed, the landlord was in the rental unit making a repair recently, but didn't have time to look behind ceiling tiles for water leaks.

Closing Submissions of the Tenants' Counsel:

In closing, the tenant's counsel submitted that deficiencies remain, and when a hearing convenes by dispute resolution, stuff gets done by the landlord. That's what's required to get the landlord to do anything. Bed bugs have been an issue for a long time, and the landlord has made efforts but not very effective. In particular, the landlord puts the onus on the tenant to complete an onerous and timely task each time. The landlord takes the position that the tenant hasn't complied but the obligations are squarely on the landlord.

With respect to the issue of *Res Judicata*, counsel submits that the Arbitrator at the first hearing was dealing with bed bugs, not the treatment problem and the Arbitrator didn't hear about the ridiculous time it took. There was some anticipation that once treatment was done it was over with, but that's not the case. Being removed from the rental unit for a time is bad enough, but the treatment itself is added. This is new and *Res Judicata* does not apply. Further, the Arbitrator thought it would be dealt with.

The mouse issue is still a problem, drywall has still not been totally repaired, only partly, the bathroom floor still hasn't been repaired, and the pattern shows that the landlord doesn't do anything until forced to and the dates of documents in the landlord's evidentiary material show that. The landlord testified that no bed bugs existed prior to this tenancy, but invoices provided by the landlord show treatments in several units.

The tenant seeks retroactive and future temporary reduction of rent until the problems are solved.

Closing Submissions of the Landlord's Counsel:

The landlord's counsel submitted that the credibility of the landlord as noted in the previous Decision of the director cannot be read in isolation, and therefore cannot be used against the landlord.

The rental building is 100 years old, has 6 stories, and tenants are lower income, and the tenant cannot expect a new building. Further, the tenant has to maintain certain standards which have not been met.

Counsel also submitted that when making a claim for damages, the burden of proof is on a balance of probabilities and submits that the tenant has failed to establish the 4-part test for damages.

Further, the bed bug issue was dealt with in the December, 2012 Decision, which is a final Decision and an absolute bar to subsequent applications. Treatment was completed and rent was reduced and still is. This claim is identical and because there are still problems, that order is still effective until the bed bug issue is resolved. The tenant has not complied with treatment instructions as required and has failed to mitigate any loss or damage suffered, and the tenant continues to be compensated by the landlord as a result of the previous Decision.

Counsel also submitted that it wasn't until the landlord received the Tenant's Application for Dispute Resolution that the landlord became aware of mice. The tenant had asked for glue traps, but no reason was provided to the landlord and it could have been for bed bugs. There is no proof that mold exists in the rental unit and the landlord learned of that when the tenant's application was served. The tenant refused entry because 48 hours notice was not provided, however the *Act* requires 24 hours. The tenant has prolonged the problem to gain more monetary compensation from the landlord.

Analysis

Firstly, *Res Judicata* is a doctrine that prevents rehearing of claims and issues arising from the same cause of action, after final judgment has been issued on the merits of the case in a previous hearing. I have reviewed the previous Decision to ensure that I do not make a finding on a matter that has already been heard and decided upon.

I have read the Decision of the director dated December 4, 2012, and I find that the director at the time contemplated a correction of the reasons for the reduction in rent. It's clear to me in the evidence that the landlord decided that was good enough, nothing more needed to be done and the tenants could continue to pay a lower rate of rent and all was well, likely believing the tenant had already received a reduction in rent and couldn't legally apply for further compensation. The evidentiary material provided by the landlord illustrates what was submitted by the tenants' counsel, that nothing gets done until the landlord is forced by some means. Although the previous Decision made a finding that rent should be reduced for the continued bed bug issue, and that reduction remains in place, I find that the tenants are not barred from applying for a further reduction in rent for the rodent issue.

Counsel for the landlord submits that the tenants have failed to establish the test for damages. The application before me is for a reduction in rent retroactively for the landlord's failure to provide services, repairs or facilities agreed upon. The tenant has not sought monetary compensation for general or specific or aggravated damages resulting from the landlord's failure to comply with the *Act* or the tenancy agreement or any orders of any authority. They are 2 very different things, and I find that the test for damages does therefore not apply.

In determining quantum, I consider the Analysis of the December 4, 2012 Decision which awarded a \$200.00 per month reduction in rent commencing January 2013 and to continue until the City has deemed that the pest problem has been eliminated, referring to bed bugs and repairs.

The *Residential Tenancy Act* requires a landlord to provide and maintain residential property in a state of decoration and 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, whether or not the tenant was aware of any breach of that at the beginning of the tenancy. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. For a landlord to simply accept a lower amount of rent for almost 3 full years after it was ordered is not acceptable and not sanctioned by the legislation. In order for the landlord to eradicate the bed bugs, the landlord will need all tenants in the building to cooperate to prevent the bugs from multiplying, moving about the building and returning. I do not find it acceptable to require the tenants to repeatedly take all of the steps necessary for preparation of treatments just to have the problem continue to reoccur. Therefore, I find that the tenant's failure to mitigate is based on the landlord's failure to ensure the job gets done effectively. I accept that it is a

heritage building occupied by residential as well as commercial tenancies which makes it more difficult for the landlord, but that does not remove the landlord's obligations under the law.

The parties received the previous Decision in December, 2012. In the circumstances, I find that the landlord ought to have been able to provide the tenants with a rental unit that complies with the *Act* and the order of the director within 3 months of that date, or by March, 2013. However, increased problems, such as rodents have also entered the rental unit and the landlord has left it to the tenants to deal with. The landlord and counsel both submit that it's difficult to tell whether or not the objects in the photographs are in fact mice. I find that absolutely absurd. There is no question that they are mice. I find that by failing to deal with the issues, the problems have compounded and the landlord has left it for the tenants, thereby reducing the value of the rental unit.

The tenants apply for an order that rent be reduced to \$200.00 per month retroactive to April 1, 2012 and continuing until such time as deficiencies are corrected. I hereby so order, and order that rent remain at \$200.00 per month until the following deficiencies have been repaired:

1. Bed bugs in the rental unit are eliminated;
2. Mice and rats in the rental unit are eliminated;
3. The bathroom, hallway and living room ceilings are repaired in the rental unit;
4. Leaking plumbing above the rental unit is repaired;
5. The kitchen walls in the rental unit are repaired and re-painted;
6. The bathroom floor in the rental unit is repaired.

I further grant a monetary order in favour of the tenants in the amount of \$5,000.00 representing full retroactive reduction in rent to September, 2015. Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby order that rent be reduced to \$200.00 per month commencing October 1, 2015 and to continue until the landlord has completed the above repairs.

I further grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,050.00. This amount may be deducted from future rent payable, or otherwise recovered.

These orders are final and binding and may be enforced.

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: September 04, 2015

Residential Tenancy Branch

