



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord for a monetary order. Both parties participated in the hearing with the landlord being represented by MM.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on April 28, 2015 and ended on or about May 18, 2015. They further agreed that rent was set at \$900.00 per month and the tenant paid a \$450.00 security deposit at the outset of the tenancy.

The tenant testified that when he viewed the rental unit, he asked the manager, GS, if the unit had any bedbug problems. He testified that she replied that there had not been problems in the unit in the years since she had been a manager. The tenant testified that on April 29, he moved some of his belongings into the unit and slept in the unit that night. The tenant testified that he awoke to find welts all over his body which were itchy and sore. The tenant saw his doctor the following day who gave the tenant a prescription. The tenant entered into evidence a statement from his doctor who stated that she examined the tenant on May 1 and found multiple raised papules on his body and was given oral antihistamines and systemic steroids. She further stated "It was subsequently determined that his living accommodation was infested with bed bugs and his skin eruption was consistent with a strong histaminic response to bed bug bites." She also stated that the tenant had a history of asthma/reactive airways.

The tenant testified that on May 4, he invited his friend JB, a professional pest control technician, to view the rental unit and stated that JB found exoskeletons in the cracks of

the floor. He stated that JB told him that the welts on his body were a reaction to bedbug bites. The tenant entered into evidence a statement by JB in which JB stated in part as follows:

The evidence found in [the tenant's] apartment clearly indicates the bugs were already there when he moved in.

Bed bugs feed about once a week and leave the digested excrement as a black dot wherever they are nesting. On the baseboards of the apartment, near his bed, there are clusters of black spots ... since bed bugs only feed once a week, it is not likely that amount of spotting on the baseboards would have come from only 4 sleeps in the apartment. There is also minor spotting on the other side of the room, on the baseboard by the kitchen.

I also found about half a dozen bed bug skin molts in the cracks of the flooring, under his bed. Bed bugs molt their skin every 5-8 days, until they are adults. They can only molt when they feed. There were molts of different stages of bed bug growth. Because the bed doesn't have a frame, and a bug wouldn't be able to fit under it, the molts were there were [the tenant] moved in. Also, it is highly unlikely that if [the tenant] brought the bugs himself, they would all molt at the same time.

Based on my findings and experience with bed bugs, I conclude the bugs were already there when [the tenant] moved in. *[reproduced as written]*

The tenant provided photographs taken on May 4 which show a bedbug on his mattress and what I presume to be exoskeletons between the floorboards.

The tenant testified that he brought the building manager, GS, to the rental unit and showed her the infestation at which time she promised that she would have the suite sprayed. The tenant stated that he advised her that he had asthma and could not stay in the suite after it had been sprayed. The parties agreed that on May 6 the unit was professionally treated by a technician who sprayed the unit. The tenant testified that he attempted to sleep in the unit and had a severe asthmatic reaction, which led him to seek accommodation elsewhere.

Over the course of the next several days, the tenant communicated with the landlord that he needed to end the tenancy and he moved his belongings from the unit. The tenant testified that he conducted his own research and learned that it was recommended that he discard his mattress, couch and wooden furniture, launder his clothing and bag and freeze remaining articles. He testified that he disposed of his

couch, mattress, box spring, 2 pillows, a duvet, a duvet cover and slips, sheets, a table and his luggage.

The parties agreed that the tenant had completely vacated the unit by May 18, 2015 and that the landlord fully refunded his rent for the month of May as well as his security deposit.

GS, the building manager, testified that when she showed the rental unit to the tenant prior to the time they entered into a tenancy agreement, the tenant did not ask her whether there were bedbugs in the unit or the building. She testified that in the several years of her employment with the landlord, there have never been bedbugs in that unit although there have occasionally been outbreaks in other units which were addressed immediately. GS testified that none of the neighbouring suites had complained of bedbug issues.

GS testified that when the tenant contacted her to report the bedbug issue, she responded by telling him that the building had experienced problems with bedbugs on occasion. GS denied having been in the rental unit on May 4 and testified that she met with the tenant in her office. She testified that no one at any time showed her any evidence of the presence of bedbugs and stated that she arranged for the unit to be treated by a pest control technician because the tenant was adamant that bedbugs were present in the unit. The landlord testified that the pest control technician had advised the landlord that he had not found any bedbugs in the unit when he attended to treat the unit on May 6.

The landlord's representative testified that the landlord decided to allow the tenant to end the tenancy and return all of his rent and his security deposit not because the landlord admitted that there was any problem with the unit, but because it was clear that the tenant was unhappy.

The tenant seeks to recover the value of the belongings he discarded and the landfill charges to dump those items, the cost of the asthma medication he was required to purchase after reacting to the spraying, the cost of eating restaurant meals during the period of time he could not be in the rental unit due to his asthmatic reaction, the cost of laundry, the cost of purchasing diatomaceous earth with which he covered other belongings in order to control the bedbug infestation, the costs associated with moving, the money he paid the landlord for parking at the building in May and the costs associated with filing his claim and serving his claim and evidence.

The landlord also filed a claim and seeks to recover the rent and security deposit she repaid to the tenant as well as liquidated damages pursuant to the terms of the tenancy

agreement, which provides that liquidated damages are payable if the tenant ends the tenancy prior to the end of the fixed term. The landlord's representative testified that she willingly returned to the tenant his rent and security deposit, but wishes to recover those monies in light of the tenant's actions against her.

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
4. Proof that the applicant took reasonable steps to minimize the loss.

Alternatively, if the tenant cannot establish entitlement under the test established by the Act, the tenant can succeed in a negligence claim if he can prove that the landlord owed him a duty of care, breached that duty and caused the tenant's losses.

The tenant claimed that the landlord either knew or should have known that the rental unit was infested with bedbugs prior to the beginning of his tenancy and suggested that by failing to act on that knowledge and advise him of the issue, she breached her duty of care to him. He alleged that at the time he rented the unit, he specifically asked GS whether the unit had a history of bedbugs, to which she replied that it had not. The tenant was unable to provide evidence that the landlord was aware of a previous infestation in the rental unit and was only able to provide evidence that the building has on occasion had bedbug issues, which the landlord readily admitted.

The tenant provided a written statement from the former occupant of the unit immediately above the rental unit which indicated that this person had struggled with bedbugs during his tenancy and the tenant also provided hearsay evidence that other neighbours had experienced bedbug issues, but did not arrange for these parties to testify at the hearing and subject themselves to cross-examination. It is clear to me on the basis of this evidence and the landlord's admission that the building has experienced bedbug activity in the past, although it is unclear how recently other units were affected.

Although the landlord claimed that they were not persuaded that bedbugs were in the unit at all, I find it more likely than not that they were present. The tenant had welts on

his body which his physician believed were consistent with bedbug bites and the tenant provided photographs showing bedbug exoskeletons between the floorboards of the unit. The tenant also provided a photograph of what appears to be a live bedbug on the mattress. I have no reason to believe the tenant manufactured this evidence.

I accept the written statement of JB, the tenant's friend who works in the pest control industry. I find it more likely than not that the bedbugs were in the unit at the time the tenant moved into the unit. However, I find that there is insufficient evidence to show that the landlord knew or should have known about an infestation prior to the time the tenant reported the issue. It is entirely possible that if there was a prior infestation, the previous occupant was unaware of it as he or she may not have reacted to any bites.

With respect to a claim in negligence, I accept that the landlord owed the tenant a duty of care. However, I am unable to find that the landlord breached that duty of care as I am unable to find that she knew or should have known that bedbugs were in that particular rental unit. The fact that bedbugs had been elsewhere in the building and that other suites had been successfully treated does not mean that the landlord should have assumed that the subject unit had bedbugs therein and there is insufficient evidence to show that any complaints about that unit or neighbouring units had been received by the landlord. Further, as discussed below, the landlord acted quickly to address the infestation once they learned of it and I find that by so acting, they met the duty of care owed to the tenant. I find that the tenant has not established a claim in negligence.

With respect to a claim pursuant to the 4 part test established by the Act, section 32(1) of the Act places upon the landlord the following obligation:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

32(1)(a) complies with the health, safety and housing standards required by law, and

32(1)(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Bedbugs can render a rental unit uninhabitable if not treated, but in this case, the landlord acted quickly and arranged for treatment just 2 days after the problem was reported. Because the landlord acted so quickly to address the problem, I find the landlord met their obligation under section 32 of the Act to maintain the rental unit. In the absence of evidence to the contrary, I accept the landlord's evidence that after the unit was treated and after the tenant vacated the unit, the unit has remained bedbug free. This leads me to believe that had the tenant remained in the unit, it is more likely

than not that the infestation would have been dealt with and he could have continued his tenancy. I find that the tenant did not *have* to move from the rental unit, but that he *chose* to move and therefore his parking fee is not recoverable.

In my view, the only loss recoverable by the tenant is the rent paid during the period of time in which he was unable to enjoy the rental unit. As the landlord has fully refunded the tenant's rent and security deposit, I find that he has been adequately compensated.

While it is unfortunate that the tenant had to or believed he had to discard many of his belongings, the landlord did not wilfully or negligently cause the bedbug infestation and therefore is not liable for those losses as the landlord is not the tenant's insurer. I dismiss the tenant's claim.

As for the landlord's claim, it is clear to me that they repaid the tenant's rent and security deposit because they recognized the inconvenience suffered by the tenant for the period of time in which he could not occupy and enjoy the rental unit. It is not now open to the landlord to advance a retaliatory claim to recoup monies given to the tenant by way of compensation. With respect to the landlord's claim for liquidated damages, I find that the fact that the landlord returned the rent and security deposit shows that the parties mutually agreed to end the tenancy. I therefore find that the liquidated damages clause was not triggered as it was not the tenant's unilateral action that ended the tenancy. I dismiss the landlord's claim.

Conclusion

The claims of both parties are dismissed in their entirety.

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: October 29, 2015

Residential Tenancy Branch

