



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE HARWOOD GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant K ("the tenant") indicated she was acting on behalf of Tenant M as well as herself. The landlord confirmed receipt of the Application for Dispute Resolution package from the tenants and both parties acknowledged receipt of the other party's materials for this hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on April 1, 2014 and continued until the tenants vacated the rental unit on July 31, 2015. A copy of the residential tenancy agreement was submitted as evidence at this hearing. Both parties confirmed that the \$615.00 security deposit provided by the tenants at the outset of the tenancy has been returned to the tenants in accordance with the *Act*. In their application, the tenants sought \$4931.00 as a result of the damage caused and loss incurred by a mouse infestation in their rental unit.

The tenant (Tenant K – at attendance at this hearing) testified that, from the start of their tenancy, she and her con-tenant noticed mouse droppings within the rental unit. The tenants testified that she spoke to the building manager on several occasions about this

issue. She did not present any documentary evidence nor did she provide testimony to indicate that she had made written requests to have this issue addressed by the landlord. She testified that, on one occasion a mouse ran across her kitchen floor. She testified that mouse droppings were regularly found throughout the home, particularly in the kitchen area. The tenant submitted that the living conditions within her rental unit and within the residential building were not “liveable” and that she should therefore be compensated for some of the rent she paid over the course of her tenancy. She submitted photographic evidence showing;

- Mouse droppings on the stove, including under the stove and under the coils on the stove-top;
- Mouse droppings inside the newly purchased couch and under the couch;
- Mouse droppings on the kitchen counter and under the kitchen sink; and
- Mouse droppings on the bedroom floor.

The tenant testified, because of the mouse droppings, she “didn’t really want to cook”. Therefore, over the course of the tenancy, she and her co-tenant ate out at restaurants regularly. She submitted copies of her bank records to indicate the cost of this continuous eating out from September 2, 2014 to July 27, 2015. She argued that the landlord should be responsible for all of her food costs for this period totalling \$1257.78.

The tenant testified that she purchased a new couch prior to moving into this unit. She submitted a copy of the receipt from the purchase as well as a catalogue photograph of the couch. She also submitted a photograph of the inside of the couch at the end of tenancy, showing mouse droppings inside. She testified that she did not take her couch to her new home given her concerns for her family’s health.

The tenant prepared two versions of her request for compensation by the landlord in Residential Tenancy Branch Monetary worksheets. One version gave exact amounts while another appears to be those same amounts “rounded up”. The tenant sought a monetary order broken down as follows:

Item	Amount	2nd App Amount
Purchasing food (eating out)	\$ 1257.78	1260.00
Moving supplies (boxes, etc.)	108.87	110.00
Rent reduction per month of tenancy x 15	2772.00	2772.00
Recovery of Filing Fee for this Application	50.00	50.00
Total Monetary Order Sought by Tenant	\$4188.65	4192.00

The landlord testified that he personally became aware of the mouse problem within the tenant's rental unit on receipt of the tenants' notice to end tenancy. In that notice, the tenant identified the issue and shortly after that, she brought the condition of her relatively new couch to his attention.

The landlord testified that he reviewed the records for this rental unit and found that three inspections were conducted by a pest management company in March 2015, May 2015 and June 2015. The landlord testified that there are 254 rental units within the building and that he is vigilant about pest control. He testified that he retains a pest control company on call to address tenant's concerns as quickly as possible. He testified that, in this case, he was not made aware of the tenants' mouse problem until move-out. He submits that he did not have an opportunity to address the problem. The landlord argued that the tenants' application for a monetary award is unreasonable in these circumstances.

The tenant testified that all of her contact over the course of her tenancy, until providing her notice to end tenancy was with the on-site property manager.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I consider the tenant's more precise monetary request in her first application in the amount of \$4188.65.

I find that the tenants have provided evidence that they had some level of mouse infestation within the residential premises. However, I will address whether the tenants have shown sufficient proof of damage or loss as a result of any mice or mouse droppings in their rental unit.

I do not accept the tenant's testimony that this infestation occurred at the outset of the tenancy. I do not find it reasonable or likely that an individual would remain in a rental unit for 15 months under the circumstances described by the tenant. I do not find that the tenants have presented sufficient evidence that proves their timeline: that they were aware of this infestation at the outset of the tenancy and therefore did not have full use

of their rental unit for the entirety of their tenancy. I accept that the tenant likely spoke to the building manager on at least three occasions given that three pest inspections were conducted in the rental unit beginning on or about March 2015, the date of the first pest inspection to the rental unit.

The tenants sought compensation for the full amount of their couch. I find that the tenants have proven that their couch (newly purchased at the outset of this tenancy) was sullied by mouse droppings by the end of the tenancy. I accept the tenants' evidence showing the cost of this couch. The couch was approximately 1 year and 3 months old and therefore would have depreciated. I accept the tenant's testimony that she discarded the couch before moving to her next residence. In order to mitigate the costs she incurred (purchasing a new couch) and any costs that the landlord should be responsible for, the tenant is required to mitigate her loss. The tenants did not take any intermediate steps to clean or recover the couch. The tenants did not provide written requests to the landlord to ensure that he was advised of the mouse problem in the rental unit. I find that the tenants provided verbal requests to the property manager (the landlord's agent) as of March 2015 but not before.

Ultimately, the landlord is responsible to ensure the health and safety of the residential premises. While he took steps to address the issue within the unit, he has some responsibility to the tenant when a pest problem exists within the residence. I find that the tenant is entitled to recover a nominal amount to in compensation for the loss of this couch.

The landlord submitted that he did not have an opportunity to rectify the problem. However, there is evidence that the landlord's agent provided the tenant with pest inspections, traps and other means of mouse/pest control to address the mouse issue. Section 1 of the *Act* provides the definition of landlord;

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement...

I accept that the landlord's testimony that he personally became aware of the mouse issue in this rental unit only at the end of the tenancy, with the written notice from the

tenant. However, the on-site property manager is an agent of the landlord. The property manager was, according to the testimony of the tenant and the evidence in pest inspections to the unit, aware by March 2015 of the mouse issue in the rental unit.

According to section 32 of the Act, and Residential Tenancy Policy Guideline No. 1, a landlord is required to maintain a residential property in compliance with health and safety standards/legislation taking into consideration the age, character and location of the rental unit. I find that the landlord (through his agent) was advised by March 2015 and made some efforts to rectify the mouse problem (again, through his agent). I find that these efforts by the landlord to address the mouse problem were done despite any written, formal requests by the tenant. I find that these efforts were consistent with the nature of the tenant's requests and complaints prior to move-out. Pest problems can be insidious and the tenant chose to vacate the rental unit.

The tenant made a reasonable decision in choosing to vacate the residence given that she was dissatisfied with the cleanliness of the residential property, particularly the pest problem. However, the tenant also testified, because of the mouse droppings, she and her co-tenant ate at restaurants regularly and did not cook at all in the rental unit. She submitted copies of her bank records and sought \$1257.78 for eating out from September 2014 (5 months after moving in) to July 2015 when she vacated the rental unit. She submits that the landlord should be responsible for all of her food costs. As stated previously, when showing damages, it is incumbent on the party claiming damages to ensure that they have attempted to mitigate any loss they have suffered. I do not find that the tenant mitigated her loss by continuing the tenancy and dining out for over one half of a year. The tenant did not provide the landlord of any indication, in writing or otherwise, prior to the end of the tenancy that she had been unable to cook and eat in her rental unit. Further notification, in writing with clarification of the seriousness of the infestation in her rental unit may have allowed the landlord to take further steps in addressing the mouse problem. Therefore, I do not find that the tenant is entitled to recover costs for dining out.

The tenant submitted that the living conditions within her rental unit and within the residential building were not "liveable" and that she should therefore be compensated for some of the rent she paid over the course of her tenancy. However, as indicated above, the tenant failed to mitigate her damage or loss sufficiently to warrant the compensation she seeks.

In all circumstances where a party makes a claim for loss, there is a duty to mitigate or to minimize that loss. Policy Guideline No. 5 addresses this duty:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

...The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

In this case, the tenant did not provide a written indication of their mouse problem to the landlord until the end of the tenancy. Nor did the tenant did not make an application for dispute resolution during the course of the tenancy to require the landlord to take action with respect to their mouse problem, as permitted under the *Act*. The tenant remained in the rental unit for a year and 3 months. Given that I have found the tenants failed to mitigate their claim for loss, I may award a reduced amount, adjusting any award for what ultimately might have been saved by further steps to mitigate on the part of the applicant.

The evidence suggests that this tenant began to advise the landlord's agent of the mouse problem in approximately March 2015. The tenant vacated the unit in July 2015. After the initial notification by the tenant to the landlord and the landlord's first and second provision of pest inspection control, I find that the landlord did take steps to address the issue within the unit. I find that the tenant's notification to the landlord and mitigation of her loss by remaining in the rental unit for a lengthy period of time result in a reduced entitlement to compensation by way of rent reduction (which encompasses any loss of cooking facilities). I find that the tenant is entitled to some nominal amount to represent a loss of use of some facilities within the rental unit. I find the tenant is entitled to \$922.50 (representing 5 months at 15% loss).

I do not find that the tenant is entitled to the cost of moving, including moving boxes. Moving boxes would have been ultimately purchased for an eventual move. They are not directly related to the issue of mouse droppings within the tenants' residence. I

provide a nominal amount towards compensation for the tenants' couch in the amount of \$244.65 (representing 35% of the \$699.00 original cost of the couch).

As the tenants have been successful in part in their application, I find the tenants are entitled to recover the cost of the filing fee (\$50.00).

Conclusion

I grant the tenant a monetary order in the amount of \$1217.15.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 3, 2016

Residential Tenancy Branch

