



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR MNDC MNSD RP ERP RR PSF

Introduction

Both parties attended the hearing. The tenant confirmed that the Notice to End Tenancy dated December 3, 2015 to be effective December 13, 2015 was served personally on them. The landlord agreed they received the Application for Dispute Resolution. I find the documents were legally served for the purposes of this hearing. The tenant requests pursuant to the *Residential Tenancy Act* (the Act) orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
- d) For a monetary order as reimbursement for repairs;
- e) To recover the filing fee for this application.

Issue(s) to be Decided:

The landlord agreed the tenant had paid the outstanding December rent the next day so the Notice to End Tenancy was cancelled pursuant to section 46 of the Act. It is no longer in issue.

Has the tenant proved on the balance of probabilities that the landlord has not done necessary repair and maintenance contrary to sections 32 and 33? Has the tenant suffered significant disruption of their peaceful enjoyment due to the landlord's act or neglect? If so, is the tenant entitled to compensation or a rent rebate and to recover the filing fee for this application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy

commenced in July 2015, it is a month to month tenancy, rent is \$750 a month (reduced in January 2016 from \$775) and a security deposit of \$387.50 was paid in July 2015.

The evidence of both parties is that there is an issue with bed bugs in the building, particularly in the unit below the tenant's where the landlord had to obtain Police help to enter to spray. She said she knows of 3 infested units, one below the tenant's and another on the same floor. The tenant previously lived in a building where his unit and furniture were destroyed by fire. He said he bought used furniture costing \$500 and beds costing \$600; he did not keep the receipts. He provided evidence of cost of new furniture that he has just bought and stored. The furniture cost \$1999.00 and the beds \$2094.38. He said that he is afraid to buy used furniture again because of the bed bug problem; he knows they can hide for a year. The landlord testified that this building was managed by her partner and she does not know what the partner told the tenant when he agreed to rent. She said it was up to the tenant to check before agreeing to rent and the landlord should not be responsible for costs of new furniture when the tenant had bought used items and brought them into the building. Maybe the used furniture had problems. She said she provided sprays to the tenant and had Pest Control attend numerous times to spray but the tenant said he still had problems with bed bugs.

The tenant said the landlord had a duty to tell him of the bed bug problem. He would not have rented there if he had known. After complaining a week after moving in, the tenant said the previous manager said they had sprayed just the week before and she thought that there was no longer a problem. He agrees that the unit has been sprayed several times by Professionals but said he and his daughter continue to get bites and see bugs. All his furniture has been removed and dumped by his request to the landlord. Photographs of bug infestation on the couch are included as evidence.

The tenant said he also had no heat in the unit until January 14, 2016 when the boilers were finally fixed. He said he got some electric heaters from the landlord at the beginning of January but he needed heat from September or October and did not have any. The manager said that only two units in the building were affected by the boiler problem. She did all she could to get the boiler fixed and there was some heat intermittently before the repair persons were able to get it going reliably. She gave some older heaters to the tenant. When he complained they were inadequate, the landlord told her that he saw the tenant had his windows open all the time. However, she provided brand new electric heaters to the tenant at her own cost until the boiler was fixed.

The tenant also asks for compensation for the significant disturbance of his peaceful enjoyment by the bed bug infestation which has caused health issues for his daughter and him.

In evidence are invoices for new furniture, estimates for moving from two companies, a letter from a neighbour confirming the bed bug problem, photos of bed bugs in furniture and of alleged mould in the unit.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The Notice to End Tenancy dated December 3, 2015 to be effective December 13, 2015 is cancelled and of no effect pursuant to section 46(4) of the Act as the evidence is that the tenant paid the rent within 5 days of receiving the Notice.

Claim for Compensation:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

This test must be satisfied:

1. Proof the loss exists
2. Proof the loss occurred because of the actions or neglect of the Respondent in violation of the tenancy agreement or the Act
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the damage or loss.

Regarding the lack of heat in the unit, I find the weight of the evidence is that the tenant had little or no heat since he moved into the unit in July 2015 until January 2016. I find the landlord worked diligently to resolve the problem but without success until January 2016. I find it is the landlord's duty to maintain the property pursuant to section 32 and

33 of the Act and the landlord was negligent in not having operating heat in the tenant's unit for several months. Taking into account that heat is not usually required in the summer months and the tenant's agreement that he did not need it until September or October 2015, I find the tenant is entitled to a rent rebate from October to December 2015 in the amount of \$50 a month for a total of \$150.

In respect to the bed bug infestation, I find the weight of the evidence is that the previous management did not take steps to adequately address the problem. I find the letters from other tenants state the problem has existed since at least 2014. The fact that this tenant had issues within a week of moving into the building supports that this was an ongoing problem. I find the present manager is working hard to address the issue, even enlisting Police help to access one of the infested units for treatment. Although I find the management is now using a Pest Control company to try to eradicate the problem, I find the evidence of the past negligence in dealing with the issue has caused significant loss to this tenant. I find the tenant took reasonable steps to reduce his loss by making his unit available for treatment and spraying as directed.

As discussed in the hearing, the tenant has no receipts to prove the actual amount of loss and it was **used** furniture that he bought. It appears to have been living room furniture and 3 beds. I find his receipts for new furniture do not support his claim. The manager also testified that she was able to buy a nice used bed for another tenant for \$100. In the circumstances, I find an award for \$500 for the loss of his used furniture is reasonable.

The tenant also pointed out he had requested some compensation for the loss of his peaceful enjoyment contrary to section 28 of the Act. I find the preponderance of the evidence is that the tenant's peaceful enjoyment has been significantly disrupted by biting bedbugs for 5 months. As discussed above, I find evidence that this problem was neglected by the landlord in the past and this has caused the present situation. I find him entitled to a rebate of \$100 a month for 5 months for a total of \$500.

I find his claim for moving costs is for future costs which may, or may not be incurred. I dismiss this portion of his claim. I also dismiss his claim for production of photographs for evidence. The costs for the Application procedure are limited to the filing fee pursuant to section 72 of the Act. I find him entitled to recover his filing fee.

Conclusion:

I find the tenant entitled to compensation as calculated below to recover filing fees paid for this application.

Calculation of Monetary Award:

Lack of heat 3 months	150
Compensation for loss of furniture	500
Disruption of peaceful enjoyment	500
Filing fee	50

Total compensation to tenant	1200.00
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To recover his awarded compensation,

I HEREBY ORDER THAT THE TENANT may deduct \$1200 from his rent. If he pays rent for February 2015, this would mean no rent payable for March 2015 and only \$300 payable for April 2015.

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 03, 2016

Residential Tenancy Branch

