



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skima Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, OLC, ERP

Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and an order instructing the landlord to make emergency repairs for health or safety reasons. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is 1 of what are a total of 18 units located within a 3 storey wood frame building which was constructed in 1983.

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began approximately 15 years ago. Monthly rent is due and payable in advance on the first day of each month. The current monthly rent is \$760.00. A security deposit of \$287.50 was collected near the start of tenancy.

The tenants claim there is a bedbug infestation within the building and within their particular unit, which the landlord has failed to properly address. As a result, they claim there has been a breach of their right to quiet enjoyment. Accordingly, in their application they seek certain compensation, in addition to orders instructing the landlord to comply with the relevant legislation and to make emergency repairs. Compensation sought by the tenants totals \$4,229.40, and is calculated as follows:

\$1,113.00: \$222.60 per month for each of the 5 months of August, September, October, November & December 2014

\$2,671.20: \$222.60 per month for each of the 12 months of 2015

\$445.20: \$222.60 per month for January & February 2016

The landlords claim that in addition to the tenants' unit, there is only 1 other unit in the building that has reported bedbugs. The landlords claim that the other unit is located on the top floor of the building, and that the report was made and the problem successfully dealt with a number of years ago.

The landlords claim that in response to previous reports from the tenants about bedbugs, the landlords brought in a pest control agent sometime in 2013, and then again in July 2014. Subsequent to that time, there is no documentary evidence before me of the tenants having reported bedbugs to the landlords, with the exception of a letter to the landlords from the tenants' advocate dated September 17, 2015. The landlords responded to the advocate's letter by way of their own letter dated September 24, 2015. In short, it appears that the landlords have not again brought in a pest control agent because the landlords are of the view that the tenants have not previously followed the instructions / procedures issued by the pest control agent, and that this is the reason why they may presently still have a problem with bedbugs.

Analysis

At the outset, the attention of the parties is drawn to sections of the Act which are particularly relevant to the circumstances of this dispute.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act addresses **Landlord's right to enter rental unit restricted:**

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

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

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

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

(2) 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.

Based on the documentary evidence and testimony, I find there is insufficient evidence to support the tenants' claim that the landlords have not adequately responded to their reports of bedbugs between the time when tenancy began approximately 15 years ago and July 2014. I find that documentary evidence of the tenants' concern about bedbugs since July 2014 is limited to the tenants' advocate's letter to the landlords by date of September 17, 2015. As noted above, for their own reasons, the landlords did not again bring in a pest control agent in response to concerns set out in the advocate's letter. However, there is no authoritative documentary evidence before me in support of the landlords' claim which is that the tenants previously failed to follow the instructions / procedures issued by the pest control agent, or authoritative documentary evidence to support the landlords' conclusion which is that this is the reason why the tenants may still have a problem with bedbugs.

In summary, I find that the tenants have met the burden of proving that the landlords have not adequately responded to their report of bedbugs pursuant to and subsequent to the advocate's letter dated September 17, 2015. Specifically, the landlords did not undertake to have the unit assessed anew by a qualified pest control agent, and to have that agent undertake any pest control measures that may be deemed necessary. In the result, on balance I also find that the tenants have suffered a breach of their right to quiet enjoyment. Following from all of the foregoing, I find that the tenants have established entitlement to compensation in the limited amount of **\$625.00**, which is calculated on the basis of \$125.00 per month for each of the 5 months from October 2015 to February 2016.

Conclusion

I hereby **ORDER** that the tenants may recover the compensatory entitlement of **\$625.00** by way of withholding that amount from the next regular payment of monthly rent.

I hereby **ORDER** that the landlords engage the services of a qualified pest control agent at the earliest opportunity, but in any event, not later than **March 12, 2016**, in order to assess the status of bedbugs in the subject unit, and to commence the appropriate treatment in the event that it is deemed necessary.

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: March 02, 2016

Residential Tenancy Branch

