



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Capital Region Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, an Order allowing rent reduction for repairs and services or facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The spelling of the landlord's name was corrected.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$525.00 for loss of use of a balcony from January to June, 2015, inclusive and loss of enjoyment?

May the tenant reduce his rent in the sum claimed?

Background and Evidence

The tenancy commenced on September 1, 2015. Subsidized rent in the sum of \$387.00 is due on the first day of each month.

The tenant said that since the first day of his tenancy he has suffered from an

invasion of flies and bees. In June 2015 wasps built a nest in the balcony area, just above the tenants' bedroom. The tenant could not recall exactly when the landlord was first contacted to discuss the issue, but he believed it was in March, 2015.

Between June and July 2015 the landlord had the nest sprayed on three occasions. The tenant said he was told to keep his windows and doors closed for several days each time the nest was sprayed. Treatments occurred during a time when there was a heat wave. Having to remain inside the unit, with no fresh air, resulted in a loss of enjoyment of the rental unit. The tenant said that from the last week of June until the first week of August 2015 he was unable to use his balcony.

The tenant submitted that after the nest was sprayed for the third time it was effective in killing the wasps but that other wasps would buzz around the balcony. The tenant has a love bird and was very concerned for the safety of his bird. The wasps that did survive the treatments were aggressive.

In September 2015, at the time the application for dispute resolution was submitted, the tenant writes that a threat continued to exist. Sitting on the balcony with his bird was stressful and the tenant felt he was placing the life of his bird at risk.

The tenant said that the landlord knew there had been a pre-existing issue with wasps but he was not told of this when he moved in. The caretaker pointed to aluminum that had been stuffed into the exterior walls by a previous tenant. The tenant would have declined the apartment if he had known about the wasp problem.

The tenant has claimed compensation:

- \$300.00 - January to June 23, 2015 in the sum of \$50.00 per month; and
- \$225.00 – six weeks the tenant suffered from heat, stress, pest control toxins, danger without use of the balcony or ability to open doors and windows (\$150.00 for one month X 1.5 months).

The tenant submitted a copy of two emails sent to the landlord; one dated August 15, 2015 and the other dated August 31, 2015.

The first email set out the allegation that the landlord knew the balcony had a wasp problem that had not been disclosed to him at the start of the tenancy. The tenant states for the first few months he was able to tolerate the insects. He was reluctant to report the problem for fear pesticides would be used and put his bird at risk. In either February or March 2015 the tenant told the caretaker about the problem at which point he said the caretaker acknowledged a previous problem with wasps.

In May 2015 the tenant noticed bees flying in and out of holes in the wall above his

bedroom window. The tenant writes he was willing to co-exist with the bees, but by June he began to feel threatened and decided to stay away from the balcony. The tenant submits he was then forced to submit to a spraying of the nest and had to keep his door closed for two days. The landlord had first vacuumed the bees out of the wall and had placed a trap on the balcony; when that did not work pest control service were required.

The initial spraying did not work and the wasps returned. The caretaker said the pest control would come again. The tenant called the caretakers supervisor, who the tenant felt was not very understanding. The landlord had the pest control technician call the tenant to discuss treatment and the tenant said this allayed some of his fears. The tenant then waited for three weeks, expecting treatment to occur. During this time the tenant could not go out on his balcony. It was extremely hot outside and the tenant was denied the enjoyment of his balcony.

After three weeks the tenant called the caretaker. An employee of the landlord came to the unit and sprayed with a retail wasp spray. This worked for two to three days; then the wasps returned. The tenant said he was told not to open his door for two to three days and to keep his windows and doors closed.

The tenant called the landlord who again sprayed the nest. This was quite effective. However, the wasps returned again and the tenant could not use his balcony.

The tenant thinks that trees outside of his rental unit are attracting the insects and wasps. The tenant said that he was concerned but did not refuse treatments.

The August 31, 2015 email informed the landlord that wasps were still an issue on the balcony; they were fewer but aggressive. The tenant again expressed his discomfort and the stress he has experienced and the fear for the safety of his bird.

The landlord responded with a chronology of events that occurred since the tenancy commenced.

On April 10, 2015 the tenant informed the caretaker that there were wasps and a crow flying around the balcony. The landlord submits the tenant refused a wasp trap for the balcony. The caretaker checked the roof for nests and found none.

On June 12, 2015 a nest was discovered above the balcony and on June 18, 2015 the nest was dusted with pesticide by the pest control service provider. On June 23 and 24, 2015 the pest control technician spoke with the tenant, as the tenant had been nervous about a follow-up spray.

The pest control technician sent the landlord an email dated September 21, 2015, setting out his experience with the tenant. He explained the caretaker had called about the nest on the balcony. An appointment was set to speak with the tenant

as it had been explained the tenant had concerns regarding the safety of the treatment and the safety of his bird. When the technician's worker had arrived on June 18, 2015, with the caretaker, he found the tenant argumentative and said he did not want the nest treated. The tenant then agreed to a "small" dose treatment, with no promise that it would work. Several weeks later the caretaker called to report the wasps had not been eliminated. The technician spoke to the tenant for 45 minutes and told the tenant if he and the bird were in the unit with the doors and windows closed while treatment took place, there would be no risk. The tenant agreed to think about another treatment and was to let the pest control company know if he wished to proceed. They did not hear back from the tenant. The technician believes that the tenants' inaction resulted in a refusal of treatment and services.

On July 13, 2015 the caretaker received a call about the wasps and two treatments were provided by the caretaker. On August 15, 2015 the tenant made a request for rent reduction.

The caretaker said that initially the tenant refused spray treatments. The tenant was not told to keep his door closed for two days; only during treatment. The caretaker does not know if there were any previous issues with wasps on that balcony. The caretaker stated that the tenant had refused the wasp trap; although the tenant said he was given one.

The landlord submitted that they had a duty to provide pest control and want tenants' to report the problems. The tenant did decline additional treatments by failing to agree to allow the pest control company to return.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

Section 32 of the Act provides, 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.

The tenant could not provide a date on which he spoke with the landlord; therefore,

I have relied on the landlord's chronology which set out April 10, 2015 as the date they became aware of the concern. Therefore, I find that the tenant is not entitled to any compensation prior to April 10, 2015, as the landlord must be informed in order to take steps to address a problem.

Between April 10, 2015, when no nest was located and the time the nest was found on June 18, 2015 there was no evidence that the tenant had made any contact with the landlord. Even if the tenant were bothered by wasps the landlord must be informed in order to allow time for an appropriate response. The tenant confirmed that they did speak in June; which aligns with the landlords' chronology that the nest was found on June 12, 2015.

Within a week of June 12, 2015 the nest was treated by the pest control company. I find that this is evidence of the landlords' effort to address the pest issue within a reasonable period of time.

From the evidence before me it is clear that the tenant had reservations about the wasp treatment as he did not wish to place his bird at risk. I find, on the balance of probabilities, that the evidence of the conversation with the pest control technician supports that fear. In June 2015 the tenant was given information on treatment options and the pest control company expected to hear back from the tenant; as the tenant was hesitant to allow treatment.

The tenant then contacted the landlord on July 13, 2015 after which the nest was sprayed twice. Again, I find the response by the landlord in July 2015 was adequate.

There was no evidence before me that the tenant made any other calls to the landlord requesting assistance or to inform the landlord that he wished to have further treatments. There was no evidence before me that the tenant called the pest control technician who had talked with him in June. The tenant waited to hear from the landlord, but if he believes he is entitled to compensation, the tenant has the burden of proving he did what he could to minimize the claim made. This would include evidence that the tenant contacted the landlord after speaking to the pest control technician, to ask when treatment would take place. Instead the tenant waited three weeks before he called the landlord again.

In relation to the tenants' submission that he was forced to keep his doors and windows closed, I find that there was no evidence before me in support of this claim. The email from the pest control technician stated the tenant was told he should keep windows and doors closed only while the spray was being applied; this appears to be reasonable. The tenant may have believed he should not open the windows and doors for several days, but there was no convincing evidence before me that he was told to do so.

From the evidence before me I find that the landlord responded to the tenants'

concerns and treated the wasp nest in an appropriate fashion. The tenant was in a position to have the pest control company attend after they spoke in June but he did not call them again and waited until July 13, 2015 to report further problems to the landlord.

In order to succeed in a claim for damage or loss the party making the claim must do whatever they can to minimize the claim made. This means that the tenant had responsibility to agree to allow further professional treatment when he spoke with the pest control company in June. If the treatment did not occur as the tenant believed it would the tenant should have called the landlord, rather than wait three weeks. Mitigation also means that if wasps were a problem in January and February, 2015 the tenant was required to inform the landlord at that time; there was no evidence before me that contact occurred prior to April 10, 2015.

From the evidence before me I find that the landlord placed a wasp trap on the balcony and treated the nest on three occasions; all in response to a complaint made by the tenant. Therefore, I find that the landlords' response was reasonable and that the tenant has failed to prove that he suffered any loss as a result of negligence of the landlord.

The tenant said he is aware that insects will be found on balconies. If the tenant sees signs of a wasp nest he is advised to immediately contact the landlord. The landlord is not required to take advice from the tenant and may proceed with any treatment suggested by their pest control company; with appropriate notice of entry.

Therefore, I find that the claim is dismissed.

Conclusion

The claim is dismissed.

This decision is final and binding and 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 14, 2016

Residential Tenancy Branch