



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes MNR, ERP, OLC, FF

Introduction and Preliminary Matter

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought the following: a Monetary Order for \$25,000.00; an Order that the Landlord make emergency repairs to the rental unit; and, an Order that the Landlord comply with the Act, regulation or tenancy agreement.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset of the hearing on January 18, 2016 the Tenant confirmed that she had moved from the rental unit in December of 2015. Accordingly, her request for an Order that the Landlord comply with the Act and make emergency repairs was no longer applicable. Those requests are hereby dismissed.

The hearing was originally scheduled to occur on January 18, 2016. At that time the Tenant claimed that she did not receive the Landlord's evidence. The hearing was adjourned to March 21, 2016 to permit the Landlord to reserve their evidence on the Tenant. At the March 21, 2016 hearing the Tenant confirmed she received the Landlord's evidence.

Save and except for above noted issue, neither party raised any issues with respect to service or delivery of evidence.

Background Evidence

The Tenant testified that the tenancy began December 20, 2014.

The Tenant sought the sum of \$25,000.00 for losses she claims to have incurred due to an infestation of insects in the rental unit.

The Tenant claimed that she received a \$25,000.00 inheritance from her mother, which she used to buy furniture and technology for her business. She claimed that due to the insect infestation in her rental unit, she lost all of the items she purchased with the \$25,000.00 as well as life-long keepsakes and photographs. She claimed that her losses exceeded \$25,000.00, but she wished to keep her claim within the jurisdiction of the *Residential Tenancy Act*.

The Tenant stated that she is a holistic wellness practitioner and this has also negatively affected her business.

The Tenant stated that she first discovered the infestation when she felt something crawling on the back of her head. She then discovered yellow feathers in the area. She testified that she then went to the doctor and was told that she had bird mites.

The Tenant testified that she also had a problem with fleas. She stated that she brought her bath water into the vet who found flea feces in her bathwater.

The Tenant also claimed that she raised this issue with the Landlord's representatives, R.H. and J.W. and asked that they take steps to rectify the situation. She claims their response was insufficient and contributed to the problem. She said J.W. dismissed her concerns and told her that she was delusional.

The Tenant stated that after these initial conversations she believed the Landlord's representatives would not help her and as a result she did what she could do to help herself, which she said was very hard because of her limited financial resources.

The Tenant confirmed that at one point in time J.W. did have someone come in and spray for fleas, which she says is an indication the Landlord also believed she had an insect problem.

The Tenant stated that when she initially viewed the building she asked J.W. if there were any issues with bed bugs and in response J.W. stated that there were issues with the tenants above the subject rental unit previously but it had been resolved. The

Tenant testified that later, the upstairs tenants were removing carpet, which led her to believe that there was a continued problem.

In total, the Tenant claimed the rental unit was infested with bird mites, fleas, lice, scabies and bed bugs. She said that she discovered these problems approximately seven months into her tenancy in July of 2015 and when they were not resolved, she moved out at the end of November 2015.

The Tenant stated that she believed the insects originated from a yellow budgie bird which she found under her heater, and pigeons who were trying to nest on her balcony. The Tenant stated that Pigeons carry every one of the insects that she listed off. She said that she used a water bottle to spray the pigeons but they did not go away. She further stated that she talked to J.W. and he confirmed he would install netting yet this never occurred because J.W. was so ill from recently undergoing open heart surgery.

The Tenant claimed that because of the insect infestation in the rental unit she now suffers from scabies and body lice. The Tenant testified that this experience has been horrendous and that it has robbed her of an entire year of her life. She said that she did three loads of laundry a day, steamed her clothes, steamed the rental unit carpets, and was otherwise consumed with dealing with this problem. She also claimed that she has isolated herself from others to prevent them from catching this, including her child, whom she claims to have not seen in a year because of these issues.

The Tenant further claimed that she tried to obtain help at the hospital, but they sent her away because they did not want her to spread the infestation.

As the Tenant provided in evidence lists of furniture items as well as their corresponding values I asked the Tenant if she had disposed of all of her furniture items. In response the Tenant testified that she spoke with an exterminator who told her to steam her items as best as she could. She stated that she did not dispose of her furniture, and as a result the problem started up again in her new rental unit.

In support of her claims the Tenant submitted the following:

- Receipts for purchase of lice comb kits, garbage bags, plastic containers, insect spray, bleach, lint rollers, insecticides, shampoo and conditioner and skin cream.
- A letter from medical clinic dated October 26, 2015 wherein the doctor writes:

“Allergy reaction

bugs on body biting her. No rash but it itches. Plan: Benedryl & exterminator.”

- A letter from a veterinary clinic dated October 30, 2015 wherein the doctor writes:

“... ”

This letter is to confirm that this morning I examined microscopically some organic matter that was consistent with the appearance of flea feces.

This material had been presented to me by one of your tenants, [name of tenant]. Her residence address is [withheld]. The material had been gathered from various surfaces in her apartment.

I presented her with my recommendation to have some professional exterminators attend to this significant flea problem. I also pointed out that carpets can harbor flea larvae and eggs and if this is the case, warrant more than one environmental treatment to most effectively deal with this problem.

I also mentioned to her a surface spray called Siphotrol that some homeowners like to have on hand if reinfestation is a possibility in the foreseeable future.

... ”

- A letter from the Tenant to the Landlord dated November 3, 2015 titled “Short Term List of Demands” and in which she demands the following:
 1. To be relocated to a hotel with a fridge, stove, TV and internet with a taxi paid for by the Landlord.
 2. Written assurance from an accredited professional that the rental unit and the Tenant’s vehicle are safe and free of insects.
 3. Professional cleaning services of the Tenant’s clothing for two weeks with a taxi paid for by the Landlord for the Tenant to attend the cleaners.
 4. Taxi transportation paid in full and in advance to and from laundry facilities and school.

5. Three plastic totes to be provided by 6:00 p.m. the day of the letter for moving food, clothing and personal belongings.
 6. Extermination of the rental unit and the Tenant's vehicle by no later than October 30, 2015.
 7. Removal of the carpets and replacement of the flooring.
 8. To be reimbursed in cash for all costs incurred by no later than November 6, 2015.
- An email from M, of A.T.S. who writes:

"Hi J.

In attachment is the flea treatment prep sheet.

Please note that there is no warranty on this treatment as there has been no conclusive evidence of fleas provided too us. I did take the samples provided to the M.R. Veterinary Clinic and they did not find any evidence of fleas or flea dirt in any of the samples."

- A Service report dated October 30, 2015 wherein the following is provided under "Pest Activity- Comments"

[rental unit] – Inspection and picked up samples. Unit is neat and clean and tidy, no pets. Resident reporting "tingling bites" while at desk in living room. No sign of biting insects (fleas, bed bugs or mites) and samples provided are fluff and hair and general small pieces of debris."

- A prescription dated November 12, 2015 for allergy medication.
- A letter from a medical clinic dated November 16, 2015 from Dr. J. D. wherein the following is written:

"this is to confirm that this patient is infested with bird mites as confirmed by Dr. J.K. when he saw the mites on her clothing. Recently she has found bird feathers and bird feces in her apartment. Since then she has found these mites on her and her clothing. She has developed a rash all over her body that was diagnosed to be due to the mite bites. She

needed treatment with medication. She has brought samples of all the evidence to our rooms and has them in her possession.”

- A handwritten letter from the Tenant wherein she details her submissions.
- Correspondence to and from the College in which the Tenant was attending confirming her withdrawal from a health care assistant program.
- An email from an insurance agent in which the writer estimates the Tenant's vehicle as being worth \$2,700.00.
- A handwritten list of furniture with corresponding values and a total of \$11,054.00.
- A letter from a women's shelter dated December 31, 2015 confirming the Tenant had been residing there since December 26, 2015.
- A letter from an outreach worker dated December 30, 2015 wherein he reiterates what was told to him by the Tenant with respect to the alleged insect infestation and the lack of response by the Landlord.
- A typed document dated December 31, 2015 wherein the Tenant lists further furniture items, with values, totalling \$8,878.88.

R.H. testified on behalf of the Landlord. He provided a copy of the tenancy agreement in evidence as well as the Tenant's Notice to End Tenancy dated November 26, 2015. He confirmed that the Tenant moved out on December 1, 2015 and although she gave insufficient notice, the Landlord did not pursue loss of rent for December 2015.

R.H. stated that it was the Landlord's position that the Tenant's claim should be dismissed. He confirmed that while she brought her concerns to the Landlord's attention, there simply is no evidence that her rental unit had any insect infestation. He further stated that when the concerns were brought to the Landlord's attention the Landlord acted promptly to hire professionals to assess and treat the rental unit, but again, there was no insect infestation.

R.H. stated that the Tenant complained of pigeons on her deck, but did not raise the issue of bird mites until October 2015 at which time they promptly dealt with it. Introduced in evidence by the Landlord was a copy of a Service Inspection Report dated October 30, 2015 from a pest management company by the name of C.P.W. Control.

The report indicates an inspection was done on October 27, 2015, and includes the following “Tech Comments”,

“Suite inspected for insect activity,, samples were found but looks like dust and lint to me. Also inspected the bed and couch as well.. From tenants description. It sounds like bed bugs but there is no evidence to support this.”

[Reproduced as Written]

R.H. further testified that the Tenant felt the, C.P.W. Control company was not sufficient and asked them to hire another pest control company. R.H. stated that at her insistence, and to appease her, the Landlord then brought in another pest management company, A.E.S. Inc. Introduced in evidenced by the Landlord (and by the Tenant as noted above) was an IPM Service Report dated October 30, 2015, from A.E.S. which again confirmed that there were no signs of biting insects. The Landlord also provided a copy of the invoice from A.E.S. confirming the Landlord paid \$200.66 for an inspection and treatment.

R.H. stated that the Tenant continued to believe that her rental unit as infested with insects. Again, although the Landlord had no evidence to support her claim, they hired carpet cleaners to address her concerns. Introduced in evidence was a receipt for carpet cleaning on November 5, 2015.

The Landlord then had A.E.S. return to the rental unit on November 9, 2015 to inspect and treat the unit as well as to treat the Tenant’s vehicle as she claimed her vehicle was also infested. The IPM Service Report was also introduced in evidence and included the following “Pest Activity—Comments”,

“No signs of fleas or any other pest activity found. Vacuum daily for the first week after treatment.

Inspection of vehicle found no signs of fleas or any other pest activity. Thoroughly vacuum the vehicle.

Please keep any bugs found for identification.”

Also introduced in evidence was an email from M. at A.T.S. who writes,

“...

Please note that there is no warranty on this treatment as there has been no conclusive evidence of fleas provided to us. I did take the samples provided to the M.R. Veterinary Clinic and they did not find any evidence of fleas or flea dirt in any of the samples.

R.H. submitted that the Tenant's medical evidence does not support a finding that the *rental unit* was infested, rather, it simply confirms what the Tenant told various professionals. Further, R.H. submitted that the doctor who allegedly saw mites on the Tenant did not in fact confirm this in writing; he suggests that the letter from a doctor dated November 12, 2015 and November 16, 2015, who writes that the patient "is infested with bird mites" is merely a letter based on information the writer appears to have received from the Tenant.

R.H. confirmed that he received the Tenant's "Short Term List of Demands" including her requests to be put in a hotel, have her food and transportation covered by the Landlords and to remove and replace the carpet in the rental unit. R.H. stated that the Landlord was not prepared to accede to these demands as there was no evidence of insect infestation.

R.H. stated that the rental unit has been re-rented for January 1, 2016 and the new renters have not raised similar concerns.

The Resident Manager, J.W., also testified. He confirmed that he did not have open heart surgery as claimed by the Tenant. J.W. also confirmed that he did obtain netting, but by the time it was received the "pigeon problem" was gone.

J.W. stated that the Tenant "kept bringing samples down every day". J.W. confirmed that he sent the samples away and the veterinarian confirmed there were no bugs.

J.W. confirmed that the new renters have not brought forward any complaints about bug infestations. He further stated that he specifically talked to them about the Tenant's concerns and to date they have not had any such issues.

J.W. also stated that there were no bed bugs in her rental unit as she repeatedly claimed. He stated that the only unit in the rental building with bed bug problems was five floors below the subject rental unit and on opposite side of the building. He confirmed the photos of the equipment were taken at this unit.

J.W. stated that the Tenant's claim that the flooring in the unit above her was removed was false. He said "there were no renovations done".

J.W. further stated that the Tenant's claim that he refused to use a particular company as they were too expensive is similarly false. He claimed he did not know who this company was, and used the company they use on a regular basis.

J.W. confirmed that there was no evidence of bugs in her unit as confirmed by the pest management companies who were hired to address this issue. J.W. stated that even though there were no bugs, they cleaned the carpet and treated the rental unit. He said these steps were taken to appease her, not because there were bugs.

In reply, the Tenant testified that the original set of feathers that were found under the heat register, were from a budgie, not a pigeon. She said she gave the samples to J.W. and he said he had them analyzed, but he threw them away.

I informed the Tenant that I had concerns with the sufficiency of evidence as the professionals who were hired to treat the unit could not substantiate her claims as to a bug infestation. In reply she stated that she was "cleaning like crazy" and that's why they could not find anything when they were there.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

A loss must be related to a tenancy to be compensable under the *Act*. Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case the Tenant sought \$25,000.00 for monetary compensation for losses she claimed she incurred as a result of an infestation of various insects. She claims the Landlord failed to take adequate steps to address her concerns and as a result she suffered considerable losses.

While it is clear the Tenant is very upset and has submitted some evidence which may support a finding that she has been *personally* affected by some form of insects, I am not able to find that these issues originated from the rental unit or are in any way related to the tenancy. After careful consideration of all the evidence filed, I find the Tenant failed to provide sufficient evidence to support a finding that the rental unit was infested with insects as claimed and as such, I am unable to find that her alleged losses are in any way related to the tenancy.

The Tenant must prove that any losses occurred as a result of the Landlord's breach of the tenancy agreement or the *Act*; in this case, while she claims to have suffered considerable losses, I am unable to find that they are related to any such breach.

The evidence submitted by the Landlord confirms the Landlord took reasonable steps to address her concerns. The evidence from the various pest management control companies who were hired by the Landlord and attended the rental unit indicates the Tenant's claims were simply not substantiated. Further, both R.H. and J.W. testified that the rental unit has been rented for three months and they have not received any complaints of insects in the rental unit.

In all the circumstances I find that the Tenant has failed to prove she suffered a loss of \$25,000.00 as a result of the Landlord's breach of the *Residential Tenancy Act* or the tenancy agreement and accordingly I dismiss her claim.

Conclusion

The Tenant failed to prove her claim and consequently it is dismissed.

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: April 11, 2016

Residential Tenancy Branch

