



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, ERP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on July 4, 2016 for: the cost of emergency repairs; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and, for the Landlord to make emergency repairs for health and safety reasons.

An agent for the company Landlord (the “Landlord”), the Tenant, and an agent for the Tenant who also acted as the Tenant’s translator appeared for the hearing. The Landlord and the Tenant (through her translator) provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application and her 11 pages of documentary evidence. The Tenant confirmed receipt of the Landlord’s 92 pages of evidence prior to the hearing. The parties agreed that while the Tenant’s evidence had been served to the Residential Tenancy Branch late, it would be still be considered in this hearing and in my decision.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party and the witness on the relevant evidence provided.

Preliminary Background and Evidence

On May 26, 2016, these parties were involved in a dispute resolution hearing with another Arbitrator to hear a previous Application made by the Tenant for the Landlord to eradicate a mouse infestation in the rental unit. The Tenant had also applied for monetary compensation and a rent reduction. The Arbitrator who had conduct of those proceedings heard the evidence of both parties and in a decision dated the same date ordered the Landlord to intensify efforts to eradicate the mouse infestation.

That Arbitrator noted that the Tenant had additional monetary claim amounts which could not be dealt with at that hearing because the Landlord had not been served notice of it. As a result, the Landlord elected to continue with her monetary claim in that hearing. The Arbitrator balanced the efforts that had been made by the Landlord to deal with the mouse infestation with the fact that the issues were still ongoing, and awarded the Tenant \$480.00 in compensation. In addition, that Arbitrator ordered the Landlord to complete full eradication of the problem and allowed the Tenant to deduct 50% of her rent until such time the problem is eradicated. That Arbitrator noted that eradication will have considered to have been achieved if the Tenant observes no evidence of mouse activity for two weeks and the Landlord's pest control company confirms in writing that the unit is no longer subject to any mouse activity.

The Tenant explained that she had brought this Application against the Landlord because the mouse problem was still ongoing and the Landlord had not intensified his efforts to eradicate the problem. The Tenant explained that she sought monetary compensation from the Landlord for rent reductions that were awarded to her in the previous hearing for which she had not applied to some months of rent. In addition, the Tenant claims costs for preparing for dispute resolutions such as travel costs to the Residential Tenancy Branch, laundry costs, costs associated with having to wash dishes twice and clean the rental unit, costs associated with damage to property caused by mice, loss of food items, and the loss of enjoyment of the rental unit. The Tenant confirmed that she had not provided any evidence to verify the costs that she was claiming. The Landlord re-iterated this point in his written submissions and stated that the Tenant was attempting to make a money grab without any receipts to verify the costs being claimed.

The Tenant was informed about the burden she bears to prove a monetary claim which requires a party to verify costs. The Tenant explained that her main objective of this Application was to get the Landlord to eradicate the issues and understood that without any evidence to verify the costs it would be difficult to make a determination on the losses she claims to have incurred, such as damage to her property.

During the hearing, the Landlord confirmed that the Tenant had not made all of the deductions from her rent that were ordered in the previous decision of May 26, 2016 and that there was balance outstanding as claimed by the Tenant of \$956.00. The Tenant requested that she be provided with a Monetary Order for this amount as she was not in a position to make rent reductions because her rent was being paid by several third party agencies. The Landlord agreed that he would make payment directly to the Tenant.

In relation to the Tenant's Application for the Landlord to make emergency repairs, the Landlord testified that since this issue had been brought to his attention he had made significant efforts to eradicate the problem. This included increased visits by the pest control company and increased inspections that the Landlord the management company had performed. When the Landlord was asked to refer to his documentary evidence to support his testimony, the Landlord referred only to pest control visits that had been performed prior to the previous hearing. When the Landlord was asked about evidence he had that demonstrated an increase in efforts made to eradicate the problem after he confirmed that he had received the decision on June 5, 2016, the Landlord stated that he did not have this evidence for this hearing. The Landlord asked the Tenant to confirm the increase in his efforts to eradicate this problem but this was denied by the Tenant who confirmed that the problem was still on going. The Tenant provided photographs to show evidence of rodent activity within the rental unit and informed the Landlord during the hearing that the source of the problem maybe from communal garbage bins which were placed in the parking level of the building.

During the hearing, the parties agreed that the best remedy in this matter based on the lack of evidence to verify the Tenant's monetary claim was for the Tenant to be awarded compensation based on an increased rent abatement to be decided by me. In addition, the parties agreed that the Landlord would look for an alternative unit in the building when one becomes vacant for the Tenant to move to. If the rental unit proposed by the Landlord is acceptable to the Tenant, then the parties should complete the necessary paperwork to reflect this change. As a result, I make the following findings in this matter and on the Tenant's Application.

Issue(s) to be Decided

What amount of rent abatement is the Tenant entitled to?

Analysis

A party that makes an Application for monetary compensation against another party has the burden to prove their claim. 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.

Based on the conversation between the parties during the hearing and the lack of evidence provided by the Tenant to verify the value of costs through documentary evidence, such as receipts, I find the Tenant has failed to meet the above test. I also find that the Tenant has been provided with a rent abatement since the issuing of the May 26, 2016 decision which is giving the Tenant appropriate ongoing compensation until the problem is eradicated. Therefore, I dismiss the Tenant's monetary claim for these costs.

The Landlord acknowledged that the Tenant had not made the deductions in the amount of \$956.00 which she was authorized to do so pursuant to the previous decision of May 26, 2016. Therefore, I grant this portion of the Tenant's monetary claim in the amount of \$956.00.

The parties agreed that the amount the Tenant would be allowed to continue to deduct from her rent would be determined by me. As a result, I make this finding based on the following reasons. The previous decision of May 26, 2016 took into consideration that the Landlord had made efforts to eradicate the mice issue. I am satisfied based on the evidence provided by the Landlord that these efforts are still ongoing. However, the previous Arbitrator ordered that the Landlord's efforts made were not sufficient and that these needed to be intensified to achieve full eradication. I find the Landlord provided insufficient evidence to show that he had intensified his efforts to eradicate the pest issue and provide relief to the Tenant. I find the Landlord was specifically informed in the May 26, 2016 decision that an increase in efforts was required and was provided with specific instructions on when eradication would be deemed to have been achieved. The Landlord failed to provide sufficient evidence of increase efforts conducted by the pest control company and the Tenant disputed the Landlord's evidence that his efforts had intensified; neither has the Tenant reported a reduction in mice activity in the rental unit.

Based on the foregoing, I find that the Tenant should be compensated for the loss of peaceful and quiet enjoyment that she has continued to experience due to the lack of action the Landlord was instructed to take after he learnt of this when he received the previous decision on June 5, 2016. In the Tenant's monetary claim, the Tenant claimed for costs associated with loss of enjoyment of the rental unit. In making a determination on this I make the following findings.

There is clear evidence before me that the Landlord has not increased efforts in eradicating the pest problem from June 5, 2016 (the date the Landlord received the decision) to the date of this hearing. Therefore, the Tenant is allowed to make future reductions of 80% to her rent starting October 1, 2016 pursuant to Section 65(1) (f) of the Act. This translates to a payment of \$191.20 for subsequent months until there is full eradication pursuant to the instructions of the previous Arbitrator. I have decided on 80% because the Landlord has already been provided with sufficient and ample opportunity to have increased his efforts to provide relief to the Tenant which he has failed to provide sufficient evidence that he has done so despite the 50% reduction that was awarded to the Tenant. I find this increase in the percentage amount will force the Landlord to take more diligent efforts to remedy the pest issue in the rental unit or provide the Tenant with a suitable alternative rental unit.

In an effort to provide retrospective relief to the Tenant for the period of time the Landlord has failed in his efforts to eradicate the problem, I find it appropriate to apply the 80% reduction that I order the Tenant to pay from October 2016 onwards retrospectively to the rent for the months of June, July and August. This translates to a total amount of \$860.40 (80% of \$956.00 is \$191.20. The Tenant has already been awarded 50% of this amount which is \$478.00. Therefore, the difference is \$286.80 per month which is applied retrospectively to June, July and August 2016).

To keep the figures from getting complicated I have added this amount to the \$956.00 already awarded to the Tenant for previous months' rent abatement for a total award of \$1,816.40 (\$956.00 + \$860.40). The Tenant is issued with a Monetary Order for this amount which the Landlord must pay the Tenant. If the Landlord fails to do so the Tenant may enforce the Monetary Order through the Small Claims Division of the Provincial Court as an order of that court. In the alternative, the Tenant may also deduct these amounts from future rent until the debt is fully satisfied.

Conclusion

The Landlord is ordered to comply with the previous May 26, 2016 decision in intensifying the efforts to eradicate the mouse infestation. A future rent abatement of 80% applies from October 1, 2016 until such time eradication is complete pursuant to the instructions provided for in the previous May 26, 2016 decision.

The Tenant is issued with a Monetary Order for \$1,816.40 for past rent abatements awarded in a previous hearing not applied by the Tenant, and for a retroactive abatement awarded to the Tenant in this hearing which is reflective of the loss of peaceful and quiet enjoyment suffered by the Tenant due to the failure of the Landlord

to act. The remainder of the Tenant's monetary claim is dismissed without leave to re-apply for those amounts. If the Landlord fails to intensify efforts to eradicate the mouse infestation, the Tenant may make another Application for a further increased rent abatement and monetary compensation.

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: August 16, 2016

Residential Tenancy Branch

