



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants on January 5, 2016 for monetary compensation for loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Tenants, the male Landlord, and a legal advocate for the Tenants appeared for the hearing. The parties provided affirmed testimony during the hearing. The Landlord confirmed receipt of the Tenants' Application and their documentary and digital evidence prior to the hearing. The Tenants confirmed receipt of the Landlords' documentary evidence also served prior to the hearing.

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 on the evidence provided. While I have considered the evidence provided by the parties in this case, I have only documented that evidence which I relied upon to make findings in this decision.

At the start of the hearing, I noted that the Tenants applied to recover costs associated with preparation for this hearing, such as costs to reproduce photographs. The Tenants were informed that these costs are not awardable under the Act and each party must bear the cost for the dispute resolution process. As a result, the Tenants withdrew these portions of their monetary claim and confirmed that the amount to be decided upon for this hearing was for cleaning costs of \$750.00 and one month's rent of \$975.00.

Issues to be Decided

Are the Tenants entitled to monetary compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The parties agreed that this tenancy began on June 15, 2012 for a fixed term of one year after which the tenancy continued on a month to month basis. Rent under a signed tenancy agreement started off at \$950.00 and was increased to \$975.00 payable on the 15th day of each month. The Tenants paid a security deposit in the amount of \$487.50 and a pet damage deposit in the amount of \$212.50. The tenancy ended on July 15, 2015.

The Tenants were asked to present their evidence first as they bear the burden to prove their claim. The Tenant testified that in August 2013 after returning from vacation they discovered a number of flies in the rental home. The Tenants cleaned them up as they were unable to determine the reason why they were there or where they had come from. The Tenant testified that they did not inform the Landlord of this issue as they had cleaned up the flies and were unable to determine their source of entry into the rental home.

The Tenant testified that on August 8, 2014, she discovered hundreds of maggots in the rental home. They were in the carpet of the bedroom and living room and around their furniture as well as on the linoleum floor of the kitchen and laundry room. The Tenant explained that she started to clean them up by using her vacuum as they were confined to one level of the home. The Tenant provided video evidence of the maggots being cleaned up from the carpet with her vacuum cleaner.

The Tenant testified that she then called the Landlord the next day, who was away on vacation, and informed him of the pest issue. The Tenant testified that the Landlord informed her that this could be carpet larvae and that he would contact his brother in law to come and look at the problem. The Tenant said that the Landlord also provided her with an email address for his wife and asked her to contact her about the problem which she did. The Tenant explained that she contacted the Landlord's brother in law who then attended the rental unit a short while later; the Tenant was unable to recall the exact day the Landlord's brother in law attended but stated that it was between August 9 and 13, 2014.

The Tenant testified that she contacted a pest control company of her own volition on August 9, 2014 who advised that they would come to the rental home on August 13, 2016 to examine the pest issue. The Tenant explained that the pest control company attended on this date and were unable to find a food source in the rental home that may point to the source of the maggots. The pest control company took a sample of the maggots to confirm that they were indeed maggots. The Tenant testified that the pest control company was unable to undertake or identify any treatment plan such as fumigation as the source of the problem could not be identified by them.

The Tenant testified that the pest control company called her back to inform her that the pest were maggots and that the Landlord should take measures to seal up windows and doors of the rental unit to prevent a potential source of entry. The Tenant confirmed that she received no formal report or document from the pest control company detailing their findings at the time of

their attendance and no written orders were provided to the Tenant or the Landlord. The Tenant also confirmed in the hearing that she did not have to pay for the pest control company's attendance at the rental home as they did not undertake any treatment or remedy.

The Tenant testified that she verbally informed the Landlord by phone that the pest control company had confirmed that the pests were maggots and that they advised the Landlord to seal the windows and doors. The Tenant explained that she then met with the Landlord following the incident at the start of September 2014 and asked for compensation because she had to spend long hours and days cleaning up and dealing with the maggots. The Tenant testified that the Landlord refused to provide compensation because it could not be determined that the maggots were present due to the Landlord's fault and that they were confirmed not to be carpet larvae which was what the Landlord had originally suspected. The Tenant confirmed that the Landlord examined the windows and doors of the rental home and left fly traps but accused the Tenants that it was their fault that the maggots were there.

The Tenant was asked whether she had any expert evidence to show where the maggots had come from. The Tenant stated that she had provided into evidence two reports which she had requested from the pest control company several months after the incident occurred. The first one page report is dated June 5, 2015 and the second one is dated September 11, 2015. The Tenant was asked to draw my attention to parts of the report which indicated the source of the problem. However, the reports do not show this. The first report explains procedures that must be followed if there is to be any spraying of the rental home, which was not eventually performed. The second report confirms that the maggot samples that were removed from the rental home were fly larvae but again no source of the larvae were identified as confirmed by the Tenant in her testimony.

The Tenant then pointed to their photographic evidence and submitted that the source of the maggots may have also come from water egress into the rental unit. The Tenant stated that she had learnt that maggots can also feed on mold and as a result of repeated flooding of the basement portion of the rental home over the years, this is where the maggots must have come from in the floor and baseboards underneath the carpet and linoleum. The Tenant submitted that the maggots were feeding on the mold and that this was their source. The Tenant confirmed during the hearing that she did not have any evidence to support this submission.

The Tenant stated that her monetary claim was for 20 hours of cleaning which she performed over 10 days and that this cleaning was extensive and stressful which caused her to suffer loss and enjoyment of the rental home for one month.

The Landlord testified that he was never informed of any fly issue in the rental home in August 2013. However, he noted that at that time he had observed that the Tenants had multiple cats and had left a basement window open for them to come in and out of the rental unit while they were away on vacation. The Landlord testified that he also observed the Tenants' cats defecating outside of the rental unit which could have been a possible source of the maggots.

The Landlord testified that he lived close to the rental unit and had he been informed of the maggot problem in 2013 he would have certainly investigated it expeditiously.

The Landlord disputed giving the Tenants the email address of his wife. The Landlord confirmed that the emails the Tenants had sent to his wife, which the Tenants had submitted into evidence, was the first time he was seeing them and that his wife had not received or responded to these emails at the time they were sent. Nevertheless, the Landlord acknowledged that the Tenants had put him on notice of the maggot issue on August 9, 2014.

The Landlord testified that he immediately arranged for his brother in law and a maintenance person to attend the rental home to examine the problem. The Landlord stated that he had provided a list of contact numbers for the Tenants to call if they had any issues as he was away on vacation at the time of this event.

The Landlord testified that he suspected at the time of the incident that the maggots were present either because the Tenants had left a food source in the rental home or that they were carpet larvae. However, after his brother in law and the pest control company confirmed that this was not the case, as the Tenants were clean people, the Landlord explained that he was not willing to provide any compensation to the Tenant as it could not be proved where they had come from. The Landlord submitted that he suspected that the Tenants' cats were the source of the problem and offered them reading material to support this suspicion which was provided into evidence. The Landlord stated that the pest control company was also unable to offer any information that would indicate the maggots were there due to the Landlord's actions or inactions.

The Landlord explained that the Tenant had called the pest control company who verbally advised the Tenant that the Landlord should seal up the windows and doors. The Landlord testified that he examined the windows and doors thereafter and there was no need to complete any repairs in this respect. The Landlord testified that he spoke to the pest control company who advised that no fumigation could be done as the source of the problem could not be identified and that the pets were fly maggots and not carpet larvae. The Landlord explained that the Tenant had cleaned up the maggots and there was no further action to take.

The Landlord explained that the Tenants were submitting that this maggot problem was a yearly event, yet he had not experienced this problem before the Tenants had moved in or after they had left. The Landlord testified that after the Tenants had vacated the rental unit in 2015, he discovered that a rug in the rental unit was covered with the Tenants' cats' urine and that this could also have been a source of the problem.

The Landlord disputed the Tenants' evidence that the maggots had come from mold in the rental unit. The Landlord explained that the Tenants' photographs were not clear and did not show evidence of mold because the Landlord stated that the blue tinge shown in the photographs was a color issue as other photographs provided by the Tenants of the same

location did not show this. The Landlord stated that there had been water leaks in the basement but these had been rectified and remedied and that there was no mold in the rental home.

The Landlord stated that he refused to provide the Tenant any compensation because he did nothing to cause the problem and that the Tenants were trying to blame this on him when there was evidence to show the problem could have come from them. The Landlord refuted the Tenants' claim for loss of peaceful and quiet enjoyment of the rental unit stating that if the incident had caused the Tenants so much stress and anxiety in August 2014, then why did they continue to stay at the rental home for several months thereafter until July 2015.

The Landlord also questioned the motive of the Tenants' claim submitting that it was being made two years after the incident had occurred. The Landlord explained that the maggot issue was not an everyday occurrence which would have given rise to compensation and that he took measures to ensure that there were no obvious signs of entry into the rental home for flies which the Tenants had not done to accommodate their cats. The Landlord explained that the windows have screens on them to prevent flies from getting into the rental unit and that when the Tenants had brought his attention to pest issues on trees outside of the rental unit, not associated with the maggots, he had diligently dealt with this issue at his expense without causing loss to the Tenants.

The Tenants disputed that they had left their basement windows open when they went away on vacation in 2013. In closing arguments, the Tenants' legal advocate re-iterated that the Tenant had to spend a large amount of time dealing with the clean-up of the pest issue and this was the reason why they left the tenancy. The Tenants' legal advocate explained that the Landlord was responsible for dealing with pest issues in a tenancy both inside and outside of the rental property. The Tenants' legal advocate also submitted that the Tenants had not experienced any problems with maggots since the time before they were occupying the rental home and at any time they have since left despite them still having their pet cats.

Analysis

Under section 7 of the Act a party who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss. Section 67 of the Act provides that if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of compensation that is due and order that the responsible party pay compensation to the other party.

When a party makes a claim for damage or loss under the Act, the burden of proof is on the Applicant to prove the existence of the loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the Respondent. Furthermore, when disputed by the opposing party with an equally probable version of the events, this results in one party's word against the others; without further evidence the party with the burden of proof has

not met the onus to prove their claim and the claim must fail. This does not necessarily mean that one party's word is believed over the other's, but simply that in the interest of natural and fair justice, a party's disputed and unsubstantiated evidence may not be sufficient to support a decision in favour of the applicant.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have carefully considered the evidence before me in this case and I make the following findings. I am satisfied by the Tenants' undisputed video evidence that in August 2014 the Tenants experienced a maggot issue in the rental home. Although the parties disputed the method in which the Landlord was informed of this issue (by email or verbally), it is clear that the Landlord was put on notice of this problem on August 9, 2014.

In this case, I must first determine if the pest problem was a result of the Landlord's negligence or breach of the Act, regulation or tenancy agreement that led to the pest problem. Both parties provide conflicting reasons as to the cause and source of the maggots in the rental home in August 2013. The Tenants submit that the presence of the maggots was the result of mold issues in the rental home that the Landlord had failed to deal with and that entry of flies may have been through the windows and doors of the rental home. The Landlord submits that the maggots emanated from the Tenants' cats. While I find that both parties provided potentially plausible reasons as to the source of the maggots, I find that the Landlord is not an expert in pet urine and feces and the Tenant is not an expert in mold issues, and neither did the parties purport to have these expertise during the hearing. What the parties did do was to put forward submissions, assumptions, and theories on the potential source of the maggots. However, neither party provides any independent or expert evidence to back up their proposed claims.

In this situation, it would have been imperative for the pest control company to have provided some type of documentary evidence detailing what investigation they undertook and if they were able to identify the source of the maggot problem, or for a mold expert to have concluded that the presence of mold in the rental unit was the cause of the maggots. However, this evidence is not before me and in its absence I find it difficult to determine who is responsible for the cause of the maggot problem itself.

Having examined the pest control documents provided by the Tenants in this case, I am only able to conclude that the maggots, according to the report, came from fly larvae. Therefore, this evidence goes some way into disproving that the maggots came from the baseboards or

flooring in the rental unit as a result of mold. The Tenants firstly failed to provide sufficient evidence of actual mold in the rental unit, and secondly that that the mold was the sole cause of the maggot problem. I find that while the Landlord provided an equally plausible explanation of the maggot problem coming from the Tenants' pets, the Landlord also failed to provide sufficient evidence, such as an expert report, to support his assertions on the source of the problem. Therefore, I find the parties' evidence results in one party's word against the others and I find the Tenants' evidence is not more compelling than the Landlord's evidence.

The Landlord is responsible for pest control both inside and outside of the rental unit so I would have been inclined to issue the Tenants an award for any loss they incurred for having to call out the pest control company which they did of their own volition and any subsequent treatment that may have been initiated. However, the parties confirmed that no such loss was suffered and the pest control company was not paid anything for coming out to examine the problem.

Conclusion

Based on the foregoing, I am only able to conclude that as the Tenants bear the burden to prove their entitlement to compensation in this case, the Tenants have failed to provide sufficient evidence to prove that the Landlord breached the Act, regulation or tenancy agreement that caused the maggot problem in the rental home. Therefore, I must dismiss the Tenants' Application without leave to re-apply.

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 24, 2016

Residential Tenancy Branch