



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on June 7, 2016 for monetary compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement. The Tenants also applied to recover the filing fee.

An agent for the Tenants and the Landlord appeared for the hearing and provided affirmed testimony. No issues in relation to the service of the Application and the parties’ evidence under the Act and the Residential Tenancy Branch Rules of Procedure were raised. 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.

Issues to be Decided

Are the Tenants entitled to monetary compensation for damage or loss resulting from a pest issue in this tenancy?

Background and Evidence

Rent for this tenancy was payable in the amount of \$2,300.00 on the 18th day of each month. The Tenants paid a security deposit of \$1,150.00 on April 17, 2016. The Landlord testified that on April 18, 2016 she met with the Tenants at which point they signed a tenancy agreement. The tenancy agreement provided into evidence shows that it was signed on April 18, 2016 with a start date of April 18, 2016.

The Tenants’ agent stated that the Tenants did not move into the rental unit until April 25, 2016 and that the Landlord failed to complete a move-in CIR despite the Tenants

requesting the Landlord to complete one. The Landlord testified that she did a full visual inspection of the rental unit with the Tenants and the Landlord's family members were present as witnesses; however the Landlord did not complete a move-in Condition Inspection Report ("CIR").

The Tenants' agent stated that the night the Tenants moved into the rental unit on April 25, 2016 they heard mouse activity in the kitchen area. When they investigated further in the kitchen cupboards they found pest activity in the form of rat droppings and a strong smell of urine and feces. In addition, part of their rug in the kitchen had been chewed up. The Tenants provided photographic evidence of the pest activity.

The Tenants' agent explained that the Tenants called the Landlord the next day on April 26, 2016 by phone. The Tenants explained to the Landlord the rat infestation as well as their frustration that the Landlord had not disclosed this problem to them before they entered the tenancy and that this was going to endanger their property. The Tenant's agent stated that the Landlord dismissed the problem insisting that this was an isolated matter and that she would contact a pest control company to deal with it.

The Tenants' agent stated that as the Landlord had dismissed the issue, the Tenants started to move out their belongings from the rental unit on April 26, 2016 and hired a truck the following day to move out heavier personal property. The Tenants' agent stated that the Landlord called the Tenants on April 28, 2016 and were informed that a pest control company was going to attend the rental unit on May 2, 2016 to remedy the problem. The Tenants' agent explained that at this point the Tenants explained to the Landlord that due to the rat infestation they wanted to move out of the rental unit and end the tenancy as they could not bear to reside there anymore and run the risk of further damage to their property.

The Tenants' agent stated that the Tenants provided the Landlord with written notice to end the tenancy; this notice to end tenancy was provided into evidence and is dated April 28, 2016 and explains that the tenancy is going to end on May 4, 2016. The Tenants' agent stated that in order to gather evidence of the pest issue, the Tenants contacted their own pest control company who attended the rental unit and provided a report detailing the pest activity. This was provided into evidence.

The Tenants' agent stated that the Tenants provided the keys back to the Landlord on May 4, 2016 and moved out pursuant to the date on their notice to end tenancy. As a result, the Tenants now claim for: loss of one month's rent; the cost of hiring a moving company to relocate the Tenants; and the cost of the pest control company they hired to evidence the pest problem, all for a total amount of \$4,646.30.

The Tenants' agent stated that the Landlord was responsible for these costs because she was aware of the pest problem and did not disclose this to the Tenants before they entered into the tenancy. The Tenants' agent confirmed that the Tenants had not provided the Landlord with written notice of the pest issue and had not given the Landlord an opportunity to have the pest issue remedied. The Tenants' agent also stated that the Tenants were not able to provide evidence that the Landlord knew of the rat activity before the tenancy started.

The Landlord disputed the Tenants' monetary claim. The Landlord testified that she purchased the rental property a week prior to the tenancy starting and she had a full inspection done with the relator and no evidence of pest issues were found. The Landlord testified that she had contacted neighbors and the previous owners to see if there was a mice problem in the rental unit to which they replied there was not.

The Landlord testified that she was a responsible Landlord and would have not knowingly rented a property that had any level of mouse activity. The Landlord testified that the Tenants were given the keys to the rental unit on April 18, 2016 and when they conducted a visual inspection of the rental unit the day before, there was no evidence of pest activity. The Landlord testified that the Tenants looked through the rental unit thoroughly as they opened all the cupboards and looked into the fridge.

The Landlord testified that she was not notified of the pest problem until the morning of April 26, 2016, being several days after they were provided the keys on April 18, 2016. The Landlord testified that she visited the rental unit in the afternoon of April 26, 2016 and saw evidence of pest activity. The Landlord testified that this was not an "infestation" as portrayed by the Tenants but appeared to be an isolated incident confined to the kitchen. The Landlord testified that nevertheless she acknowledged that it was an issue which she had an obligation to remedy under the Act.

The Landlord testified that during her visit on April 26, 2016 she informed the Tenants that she would be contacting a pest control company to come out and remedy the issue as soon as possible. However, the Tenants insisted that they did not want a pest control company to come out but they wanted out of the tenancy and had already started to make preparations to move out of the rental unit. The Landlord testified that she explained to the Tenants that as this issue was a surprise to her, they needed to let her deal with the problem and not take matters into their own hands by contacting their own pest control company.

The Landlord testified that she then contacted a pest control company and scheduled them to come to the rental unit on May 2, 2016. The Landlord testified that she then contacted the Tenants on April 28, 2016 to inform them of the date the pest control company was going to come out to the rental unit. The Landlord testified that the Tenants responded stating that they had already called out their own pest control company and that they were not going to let her pest control company into the rental unit. The Landlord stated that she then received the Tenant's written notice that they were going to be vacating the rental unit on May 4, 2016.

The Landlord testified that she then gave the Tenants a written request of entry into the rental unit dated April 28, 2016. This written notice was provided into evidence and asks the Tenants to reply with a date that they will allow entry of the Landlord's pest control company into the rental unit as she was obligated to remedy the problem pursuant to the Act.

The Landlord testified that she did not receive any response back from the Tenants with a date and therefore, she provided a notice of entry dated May 1, 2016 for entry on May 2, 2016 to address the pest issue. The Landlord provided a report from the pest control company she employed which details that the company laid rat traps on May 4, 2016 to remedy the issue. The Landlord stated that the Tenants' motive to end the tenancy was to get out of the fixed term tenancy and that they did not give her any opportunity to remedy the issue. The Tenants' agent denied that the Tenants were given any notice of entry for the pest control company.

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. 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.

In this case the burden of proof is on the Tenants. Therefore, based on the foregoing provisions of the Act, I have carefully considered the evidence before me and I make the following findings.

Firstly, Section 44 of the Act provides ways in which a tenancy may be ended. In particular, Section 45(3) of the Act states that a tenant may end a tenancy if a landlord has failed to comply with a material term of the tenancy agreement **and** has not corrected the breach within a reasonable period **after** the tenant gives written notice of the failure. **After** that point the tenant may give written notice to end the tenancy.

In this case, I find that the Tenants have failed to comply with the Act in ending the tenancy. This is because the Tenants did not put the Landlord on notice of the pest issue in writing. However, I accept that the Landlord became aware of the pest issue on April 28, 2016 when it was disclosed to her by the Tenants as a verbal complaint. I find the Tenants failed to give the Landlord any indication either verbally or in writing of a reasonable time for the Landlord to remedy the pest issue. Rather, I find the evidence before me is that Landlord attended the rental unit on the same day the pest issue was reported (April 28, 2016) and made efforts to diligently deal with the pest issue pursuant to the Landlord's requirement to maintain the rental unit under Section 32(1) of the Act. I accept the Landlord's evidence on the balance of probabilities that she arranged for a pest control company to remedy the issue on May 2, 2016, being four days later.

I find the Tenants had a duty under the Act to give the Landlord an opportunity to remedy the problem **before** they decided to move out of the rental unit. Therefore, the Landlord cannot be held responsible for the losses the Tenants incurred by ending the tenancy prematurely and contrary to the Act.

Furthermore, the Tenants make their monetary claim on the basis that the Landlord was aware of the problem before she entered into the tenancy with them. However, I find that the Tenants rely only on an allegation to support this submission. The pest control company reports provided by both parties do not show the source of the pest issue or

where it emanated from; neither do the reports show that the pest issue was so extensive that it could be deemed or be described as an “infestation” as this would have been obvious and evident to the parties at the onset of the tenancy. Therefore, I find the Tenants’ evidence that the Landlord knew about the pest issue before entering into the tenancy with them is unproven.

I also deny the Tenants’ claim for the pest control company they hired to investigate the issue. This is because under the Act, it was the Landlord’s duty to remedy the issue by hiring the pest control company. The evidence before me is that the Landlord took steps to do this and therefore, there was no need for the Tenants to do this. The Tenants’ agent stated that the Tenants hired a pest control company to further their evidence in this matter. However, in this respect, the Landlord should not be held liable for the costs incurred by the Tenants to prove their claim which has been unsuccessful.

Conclusion

The Tenants have failed to show that the Landlord breached the Act in dealing with the pest problem when the Landlord was informed of it. I find the Tenants have failed to meet the above test to prove they are entitled to the compensation they claimed. I find the Tenants ended their tenancy contrary to the Act and the Landlord should not be held liable for costs the Tenants incurred as a result of their decision to move out of the rental unit prematurely. Therefore, the Tenants’ Application is dismissed 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: November 30, 2016

Residential Tenancy Branch