



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FF, MNDC, MNR, RP

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order that the landlord make emergency repairs for health or safety reasons.
- b. An order for a monetary order in the sum of \$748
- c. An order that the landlord pay compensation for the cost of emergency repairs already made by the Tenant
- d. A repair order
- e. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on October 19, 2016.

The tenant vacated the rental unit at the end of October and has no interest in reinstating the tenancy. As a result I dismissed the tenant's claim for emergency repairs and a repair order as those claim are no longer relevant.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order that the landlord pay compensation for the cost of emergency repairs made by the Tenant.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on August 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$975 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit and pet damage deposit totalling \$975 at the start of the tenancy.

On October 7, 2016 the tenant gave the landlord a Notice in writing that she was vacating the rental unit and that the landlord could keep the security deposit and pet damage deposit to cover the rent for October.

Briefly, the tenant gave the following evidence:

- On September 14, 2016 she was advised by her babysitter that there was activity in the walls (mice or rats).
- She pulled out the couches and discovered a large amount of rat faeces.
- She immediately vacuumed all of the faeces and purchase "Rat Kill" .
- She advised the landlord of the rat infestation on September 14, 2016.
- On September 15 she received notice from her landlord to clean the carport of the garbage. She testified she was unable to comply because she had no other place to store her belongings.
- The maintenance officials from the landlord arrived the next day and set two traps. One trap was in a linen closet which was closed.
- For 48 hours there were no rat droppings.
- On September 22, 2016 she heard rats again and advised the landlord.
- The landlord attended but told her that her house was too cluttered to keep the rats out. The tenant objected to this as she felt the rats were living outside and only visited at night. She wanted them to block the entry.
- During the first couple of weeks in October the tenant was vacuuming and bleaching the floor on a daily basis.
- At some stage the tenant had rented another rental unit which she could take possession of on October 28. On October 14 she could no longer stand the stress of living with the rat and, with the assistance of her parents she moved into a hotel room.
- At this time her father contacted management and yelled at the person who received his phone call.
- She had previous given the landlord to enter her rental unit at any time to deal with the rat problem.

- After being relocated the landlord called in an exterminator. She was given a list of things to do all of which was completed within 24 hours.
- She lost over \$300 of dry unopened cereal and other dry good food products.
- She advised management of a entry point under the dishwasher.
- She testified her claim of \$748 is an estimate of the cost of the hotel room and the cost to purchase a storage unit for a month
- She produced a receipt from a hotel in the sum of \$691.
- She testified she rented the storage unit on October 10 to put her new furniture in. The cost of the storage unit was \$139. She has a receipt but failed to include it in the materials.
- She has other claims which would total over \$2000.

Briefly, the landlord gave the following evidence: She testified her summary of events was based on memos, work orders and letters made contemporaneously and kept in the ordinary course of business.

- On September 15 the landlord gave the tenant notice to clean the garbage from her carport.
- The tenant first reported the rat problem to the landlord after business hours on September 21. On September 22 the maintenance man for the landlord set two traps (one in the linen closet and the other outside). He closed off access to the linen closet because of the tenant's infant daughter being present.
- At 4:50 p.m. on Friday, September 23 the tenant advised the landlord there was a smell in the linen closet. The maintenance man had left for the weekend. The landlord told the tenant the following:
 - She could provide the tenant with the tools to open up the linen closet. The tenant stated she would wait until the next Monday.
 - Maintenance had advised the landlord that it was impossible to locate access points until the rental unit was cleaned.
 - Maintenance had notified her that excessive mess and food build-up throughout the unit would lead to more rat problems.
- On September 26 the maintenance person checked the outside trap but was not able to get access to check the trap in the linen closet as no one was home.
- On September 27 both traps were checked.
- There were no further reports from the tenant for the remainder of the month.
- In the first week of October the landlord contacted the tenant about non-payment of rent. On October 7 the tenant gave the landlord a letter to confirm the landlord could keep the security deposit and pet damage deposit for the rent for October and that she was vacating at the end of October. She told the landlord she thought it was a pack ratt gaining access from under the dishwasher. The

landlord told the tenant they could board it up if there is an opening but that this may not solved the problem given the messy condition of the rental unit.

- On October 15 the landlord's maintenance person received a telephone call from the tenant's father complaining about a rat infestation.
 - On October 17 the landlord contacted the tenant. She told the landlord her baby was sick and they were now living in a hotel. The landlord stated they would contact a Pest Control Company.
 - On October 18 the Pest Control company attended with the maintenance person. The pest control official stated he was not able to start a trapping program until the unit was cleaned up and food sources eliminated.
 - The Pest Control Company provided letter which includes the statement: "-this suite is in a pretty disastrous state...."
 - The pest control contractor provided the landlord with a letter that states: "Before we can start the trapping procedure, there are several housekeeping items that need tending to."
 - All for items must be stored in tuper ware style containers.
 - The floor must be clear of debris and clutter.
 - Garbage must be put in binds with a lid both inside and outside the unit.
- Until the above is satisfied, we are unable to provide any assistance in the trapping process."

The tenant was advised of the letter from the Pest Control company.

- On Thursday October the landlord's maintenance person inspected the rental unit and found it to be tidied up. The landlord contacted the tenant and she confirmed she was no longer in the rental unit. The landlord set 3 traps in the unit.
- On Monday October 24 the landlord found one rat in a trap and the second one set off but nothing caught.
- On October 25 the landlord checked the traps and found one set off but nothing caught.
- On October 26 the landlord checked the traps and found one set off and some blood near it but nothing caught.
- For the next few days the traps were checked and there was no signs of activity.
- On October 31 the traps were checked and one was set off but nothing caught.
- The landlord attempted to contact the tenant to arrange for a condition inspection but she was not home and a message was left.
- On Tuesday, November 2 the tenant contacted the landlord saying she had left the keys in the mailbox.

Analysis

Section 32(1) and (2) provide as follows:

Landlord and tenant obligations to repair and maintain

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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. In order to justify payment of damages under sections 67 of the Act, the Applicant tenant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in losses to the Applicant pursuant to Section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss, in this case the tenant, bears the burden of proof and the evidence furnished by the Applicant tenants must satisfy each component of the test below:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the actual amount required to compensate for loss or to rectify the damage

- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

In respect to the tenant's claims I find that the Tenant failed to prove that her losses were caused by the actions or neglect of the landlord for the following reasons:

- The landlord did not create the rat problem. Based on the evidence presented the more likely explanation was that the rats were attracted to the tenant's rental unit because of the food left out and the messy conditions in the rental unit.
- The tenant failed to prove the landlord was negligent in dealing with the problem.
- The landlord was told about the problem in the late afternoon and traps were set the next morning. I prefer the evidence of the landlord that they were first told of the problem in the late afternoon on September 21 and not on September 14 as alleged by the Tenant. The tenant did not give notice in writing. The landlord's summary is based on documents prepared contemporaneously and kept in the ordinary course of business.
- The tenant was given notice prior to the rat problem about removal of the garbage in her carport but she refused to deal with the situation.
- The tenant was given an explanation of the need and how to clean the rental unit in order for the problem to be dealt with but she failed to do so in a timely manner.
- The Pest Control Contractors gave a letter about the poor condition in the rental unit.
- The Pest Control Contractor also gave a letter outlining what was required by the Tenant in order for them to complete the work. When the tenant eventually cleaned the rental unit the landlord was able to set the traps.
- The tenant failed to provide sufficient evidence to prove that the illness of her child was caused by the present of rats.
- The tenant rented the storage facility on October 10 in order to store new furniture she was purchasing. She failed to present documentary evidence to prove this expense. Further, I determined the tenant failed to mitigate her loss by renting the storage facility when she did. This was her choice and the landlord is not responsible for this claim.
- The tenant claimed the cost of emergency repairs which she has incurred. However she failed to provide evidence of these costs and this claim is dismissed.

In summary I ordered that the tenant's claim be dismissed without leave to re-apply as the Tenant failed to prove the landlord breached a duty under the Residential Tenancy Act.

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: December 07, 2016

Residential Tenancy Branch