



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bryan Home Case Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for emergency and other repairs - Section 32;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord corrected the name of the corporate Landlord as set out in the application. The Tenant consented to an amendment of the application to set out the correct name of the Landlord.

During the Hearing the Tenant confirmed that the tenancy will end and the Tenant will be moving out of the unit on February 28, 2017. The Tenant also confirmed that the unit will not be lived in to that date. Given this evidence I find that the repairs to the unit are not necessary for this tenancy and I dismiss the claims for repairs.

During the hearing the Tenant indicated that it wished to claim a compensation amount greater than that set out in the application. The Tenant stated that although some of her belongings were damaged she was not including any claim for this damage in this

application or in the increased amount being sought at the hearing. Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As the Tenant did not amend the application to increase the amount stated in the application I find that the Tenant is restricted to the monetary claim set out in the application. Although the Tenant has not claimed anything in this application in relation to damages to her personal belongings, I caution the Tenant in relation to a claim for damages that arise from the same breach that may be determined in the present application.

Issue(s) to be Decided

Has the Landlord breached the Act or tenancy agreement causing the Tenant losses?
Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on March 1, 2016. Rent of \$1,600.00 is payable on the first day of each month.

The Tenant states that since the end of summer 2016 the Tenant has had rodents in the unit. The Tenant states that she verbally informed Landlord BW of the presence early September 2016 and that the Landlord shrugged it off by saying rodents were in other buildings too. The Tenant states that Landlord BW also informed her at that time that they have a pest control company coming into the building once a week. The Tenant states that the building posts the visits of the company and that they only note their attendance once a month. The Tenant states that until January 2017 no pest company entered her unit to inspect or repair the unit. The Tenant states that she purchased several different pest control items and filled approximately 20 holes in the unit from that point until the pest control and Landlord attended the unit in January 2017. The Tenant submits an estimated a cost of \$200.00 for these items. The Tenant states that between September and January she repeatedly complained about the rodents and informed Landlord BW that her own efforts were not working.

The Tenant submits that the rodents were at first few in number but escalated quickly and the Tenant could hear them running and scratching in the walls of the unit. The Tenant states that she saw rodents run in front of her and that dead rodents caught in some of the traps had to be collected and disposed of by the Tenant. The Tenant states that she has spent time cleaning and throwing out contaminated food. The Tenant states that she would scream at the sight of the rodents and that she could not sleep in her bed. The Tenant provided photos of the unit. The Tenant states that she no longer stayed in her unit after the end of December 2016 but would return to monitor and clean the unit. The Tenant states that she also brought a cat into the unit for a couple of weeks and that by the looks of the blood and bits left around that the cat did take care of several rodents.

The Tenant states that it was not until the Tenant wrote a formal letter on December 27, 2016 that the Landlord finally has the pest control company inspect her unit and take action. The Tenant states that after the pest company attended the unit the Tenant spoke to them and she was informed that a bait trap had been left under the stove. The Tenant states that she immediately checked and found no bait trap. The Tenant states that she was not confident about the work of the pest control company hired by the Landlord and requested a different company from the Landlord. The Tenant claims \$1,800.00 in compensation.

Landlord JY states that the first time he heard about the problem was when the Tenant sent the letter. Landlord BW states that the Tenant never told him about any pests in the unit. Landlord JY states that the pest control company attended the unit on January 3, 2017. It is noted that the report from this visit indicates that holes still require covering as of that date. Landlord JY submits that on January 10, 2017 he checked with the Tenant to discuss the problem. Landlord JY states that he agreed that the Tenant could find another company and that the Tenant was supposed to send the Landlord a quote. Landlord JY states that when he did not hear back from the Tenant he instructed the existing company to come back and they did return for further treatment of the unit on January 26, 2017. Landlord JY also submits that on January

13, 2017 he attended the unit and covered three holes with silicone and spray foam. Landlord JY states that since the last visit by the pest company on January 20, 2017 no further fresh droppings have been found. The Landlord states that since January 2017 another unit has reported the presence of rodents but that prior to this unit having rodents there were no other complaints of rodents in any of the other unit. The Landlord states that to be sure they had the pest company leave traps in two units below the dispute unit. The Landlord states that the Tenant had a dog in the unit and that the food left out by the dog would contribute to the problem.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

I find the Tenant's evidence of verbally informing the Landlord of the presence of rodents in the fall of 2017 to be more credible than the Landlord's denial of this verbal report. I consider a rodent infested unit to be a danger to the health and safety of persons living in that unit and that a rapid response would be appropriate to a report of rodents in a unit. I do not consider the Landlord's evidence of the presence of a dog to have caused the infestation given the evidence that a pest control company has been monitoring the building for the past three years. Further, I do not consider that the Landlord has provided sufficient evidence that the presence of a dog would contribute to the infestation particularly where the Landlord has done nothing for several months.

As nothing was done by the Landlord until January 3, 2017 I find that the Landlord was negligent and failed to maintain a safe and healthy unit for at least four months. I find that the amount of work and disturbance caused by the presence of rodents was so significant that the Tenant received very little peaceful enjoyment of the unit during that time. I also find that the tenancy lost significant value during the rodent infestation. For these reasons I find that the Tenant has substantiated the compensation claimed of **\$1,600.00**. As the Tenant gave notice to move out of the unit I accept that the Tenant has taken reasonable steps to mitigate her losses. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,700.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,700.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 10, 2017

Residential Tenancy Branch