



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OLC, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for the cost of emergency repairs, a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing, and on the application of the landlord, I ordered that the hearing be adjourned for 3 days, and my Interim Decision was provided to the parties.

Both parties attended the second scheduled hearing, and each gave affirmed testimony and provided evidentiary material in accordance with my Interim Decision.

The landlord called 2 witnesses and the tenant had 1 witness to call. I had excused the witnesses until it was time for them to testify. After the tenant had testified, I learned that his witness had left the conference call hearing by hanging up his cell phone, but remained in the same room as the tenant, hearing all of the tenant's testimony. The tenant said that he and his witness had misunderstood my instruction, and I accept that. However, the witness did not testify.

The landlord's witnesses each gave affirmed testimony, and the parties were given the opportunity to question each other and the landlord's witnesses respecting the testimony and evidence of the parties, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs, and more specifically for exterminator's fees?
- Has the tenant establish a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for postage, laundry cost, cleaning and medication?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement with respect to providing and maintaining a rental unit in a state of decoration and repair that makes it suitable for occupation by the tenant?
- Should the tenant be permitted to reduce rent for repairs, services or facilities agreed upon but not provided, and more specifically by the amounts claimed for the cost of emergency repairs and compensation for damage or loss?

Background and Evidence

The tenant testified that this fixed term tenancy began on June 25, 2016 and expires on June 30, 2017 after which it reverts to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord and no pet damage deposit has been collected. The rental unit is a suite in a complex containing 4 units, and the landlord does not live there. A copy of the tenancy agreement has not been provided.

The tenant also testified that no move-in condition inspection report was completed at the beginning of the tenancy; he moved in 5 days early and the previous tenant was just moving out. The rental unit was very dirty and the tenant had no choice but to clean. It took 5 days to clean the kitchen, and the landlord arrived at the end of the month with a copy of the tenancy agreement, and the parties did the inspection at that time. The tenant has a copy, but has not provided same for this hearing.

The tenant further testified that a couple of months after moving in he noticed bed bugs. The tenant retained an exterminator who inspected and found evidence of bugs in the tenant's bed but no actual bed bugs in any furniture or the suite and told the tenant to call if any evidence of bugs were noticed. The tenant did notice some later and called back 2 or 3 times but the exterminator never returned the tenant's calls.

The tenant called another exterminator who attended and completed treatments and said he would call the landlord. The landlord told the tenant he'd call the previous tenant to see if he ever experienced bed bugs, but never did call the exterminator back.

The tenant has provided copies of 2 letters addressed to the landlord. The first is dated November 2, 2016 and requests that the landlord deal with the bed bug issue. The second is dated November 16, 2016 and again requests prompt attention to the problem before the tenant would apply for Arbitration, which was accompanied by the first invoice. He placed them in the landlord's mail slot which goes inside his home, with his witness present. The landlord told the tenant that he didn't get it. A second treatment was done and a copy of the invoice has been provided in the amount of \$630.00 and it is dated October 17, 2016. The tenant testified that he paid the same amount twice, but the landlord was given the first invoice so it could not be provided for this hearing. The treatments cost \$630.00 each.

The exterminator told the tenant that he had to vacuum all drawers, closets and bag all clothing to take to a laundromat and said that the laundry facilities in the building wouldn't get hot enough to make sure the bugs are killed. The tenant claims \$185.00 as against the landlord for laundry.

After the treatments were done and bug bites were cleared up the tenant was still getting bad itching so he went to a medical clinic and received a prescription for lotion that he had to put under his chin and down his body. The tenant claims \$26.24 for the cost and has provided a copy of a receipt in that amount dated November 4, 2016.

The tenant also claims \$25.00 for the cost of delivering letters to the landlord because the landlord wouldn't return the tenant's calls about bed bugs.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$25.00 for delivering letters to the landlord;
- \$635.00 for the first bed bug treatment;
- \$635.00 for the second bed bug treatment;
- \$185.00 for the cost of laundry; and
- \$26.24 for the prescription.

The tenant referred to the treatment costs at \$635.00 each during his testimony, however the receipt provided is in the amount of \$630.00. Also, during the tenant's closing submissions, the tenant advised that his claim is for 2 months rent for loss of quiet enjoyment of the rental unit and the efforts the tenant had to make, including cleaning up after the previous tenant.

The tenant has also provided additional evidence in accordance with my Interim Decision which consists of print-outs from the pest control company account in the amount of \$630.00 on each of the dates of October 28, 2016 and November 4, 2016.

The landlord testified that the tenant was recommended to him by another tenant, and the tenant wanted to move in early and the landlord agreed. A week or so before that the parties saw the rental unit and it appeared quite clean. Around the 29th of June, the landlord went to the rental unit to sign the tenancy agreement and complete the move-in condition inspection report, and a copy has been provided for the second scheduled hearing date, as per my Interim Decision. The landlord testified that only 1 item required attention; the patio door lock needed to be repaired. Nothing else was noted except for cobwebs, but no major cleaning was required.

At the end of October, 2016 the tenant called exterminators, however most of the tenant's furniture and carpet were purchased used from an auction. The landlord mentioned that to the tenant sometime in late October, 2016, and he seemed to agree. The landlord talked to the previous tenant, who advised that there were no bed bugs in the rental unit when he lived there and there are none in his new home.

The landlord also testified that he did contact the exterminator, who said he believed it was bed bugs and that during warm conditions they multiply very fast. Surely, it would not have taken 4 months for the tenant to notice if they pre-existed this tenancy.

The landlord was out of country from December 16, 2016 to January 6, 2017, and because the tenant seemed to agree that bugs may have come from used furniture and carpeting, the landlord didn't expect arbitration.

The landlord's first witness (KV) testified that she resides under the tenant's rental unit, and has been a resident of the rental complex for 4 or 5 years. The witness has never heard any mention by neighbours about bed bugs. The witness has never had them, nor did the tenant who previously occupied the rental unit of the applicant ever mention it.

The tenant told the witness that he had purchased a rug and some furniture from an auction, but the witness does not know all of the items purchased.

The landlord's second witness (RK) testified that he resided in the rental unit of the applicant for about 6 ½ years, and never had bed bugs, nor are there any in the witness' current home.

The witness knew the tenant prior to this tenancy, and had asked the witness when he was moving out. The tenant told the witness that he needed desperately to move out of his current unit, and the witness told him that he didn't have enough time to clean. However, the witness gave the tenant the key on the 26th of June, 2016 and the witness had paid rent to the end of June, 2016.

Analysis

In this case, the tenant claims the costs of extermination for bed bugs as emergency repairs for health or safety reasons, as well as for medication, and claims his estimated costs for cleaning the rental unit, laundry costs and postage.

In order to be successful in a claim for damages, the onus is on the tenant to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate such damage or loss.

The move-In condition inspection report does not indicate the date the inspection was completed on but does contain a checkmark in the box that says, "I, (the tenant) agree that this report fairly represents the condition of the rental unit," and is signed by the tenant. It shows a possession date of July 1, 2016, and that some walls, windows, window coverings and the kitchen fan were dirty. The tenant testified he moved in 5 days early and the landlord testified that the condition inspection report was completed around the 29th of June, 2016. The landlord's second witness (RK) testified he moved out and gave the tenant the key to the rental unit on the 26th. I am not satisfied that the landlord had any opportunity to clean the rental unit prior to the new tenancy starting considering that the tenant moved in during the move-out of the previous tenant. Also, the previous tenant testified that he told the tenant he didn't have time to clean if the tenant was moving in so soon, but the tenant desperately needed to leave his current unit. Therefore, I am not satisfied that the tenant has established that he mitigated any loss for cleaning costs, or that the landlord has failed to comply with the *Act* or the tenancy agreement. The tenant's application for cleaning costs is dismissed.

I am also not satisfied that the tenant mitigated any loss with respect to bed bugs. There is no doubt that the treatments were done, but none of the other tenants have been affected. There may have been bugs, but when purchasing furniture and carpets at an auction, one ought to have them thoroughly cleaned. I find that the tenant has failed to establish that the landlord failed to comply with the *Act* or the tenancy agreement, or that the tenant did what was reasonable to mitigate any damage or loss suffered, and the tenant's claim for exterminator costs, prescriptions and laundry costs are dismissed.

The *Residential Tenancy Act* provides for recovery of a filing fee but not for costs associated with preparing for a hearing or serving documents. Therefore, the tenant's claim of \$25.00 for delivering letters to the landlord is dismissed. Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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 02, 2017

Residential Tenancy Branch