



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP MNDC OLC PSI RP

Introduction:

Both parties attended and gave sworn testimony. The tenant said that she served the Application for Dispute Resolution personally on the landlord and he agreed he received it. I find that the landlord is served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* for orders as follows:

- a) Compensation of two months rent (\$1050 x 2) as the landlord has failed to provide housing in a satisfactory state of repair that complies with health and safety standards;
- b) An order that the landlord hire a pest control company to provide a permanent solution to the infestation of bed bugs;
- c) A monetary order pursuant to Section 67 for compensation
 - (i) \$460 for a mattress and bedding ruined due to an infestation of bedbugs;
 - (ii) \$35 reimbursement for medication and sprays needed;
 - (iii) \$750 reimbursement for cost of food in restaurants from January 21, 2017 to February 7, 2017 as the tenant was unable to use the cooking facilities;
 - (iv) \$2500 compensation for her time expended to clean up, for stress and bodily and mental suffering due to the bed bug infestation.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord through act or neglect violated the tenancy agreement or Act and caused damages to her for which she should be compensated? If so, to how much has she shown entitlement?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and make submissions. It is undisputed that the tenancy commenced December 15, 2016 with the tenant gradually moving in until January 5, 2017. The lease is a fixed term lease expiring June 30, 2017. Rent is \$1050 a month and a security deposit of \$525 was paid.

Both parties agreed that the tenant first reported the presence of bed bugs in her unit on January 16, 2017 after she noticed painful bites on her body and consulted a doctor. The tenant recorded the conversation and provided it as evidence. The manager explained to her the process of treating for bed bugs. The landlord said he called their regular pest control person that day but he was unavailable until the 22nd so he arranged for an alternate technician to do an initial inspection and pre spray the baseboards on January 18, 2017. The tenant said she was not happy with this technician as he did not explain the process and did not seem to treat the whole unit. She had to move her belongings from under the bed and move her bed to the middle of the room which severely limited her work space in this micro unit. She said she was misled by the building manager for he denied the presence of bed bugs in the building and did not admit that the unit had been sprayed twice before she moved in although she enquired about the history. She said she would not have moved in if she had known the history.

On January 21 and 22, the weekend manager filled the gaps under the heater and gave her \$20 on her laundry card so she could wash her bedding and clothes to kill the bugs. She found 3 bugs that night. She was asked to keep all her belongings in the middle of the floor. It was inconvenient, stressful and impossible to work.

On January 23, 2017 the regular technician returned and required her to leave for 4 hours so he could do a complete treatment. There was a big mess when she returned. She had to move furniture, mop the floor to get rid of the sticky residue of the sprayed product and leave the windows open all night in the cold weather.

On February 5, 2017, she said she woke up with 4 bites. She informed the landlord and he said the pest control company would spray again on February 7, 2017 and inspect some other units also. At that time she found a bug on a bed pillow and kept it to show.

On February 7, 2017, the technician required her to bag all her clothes as he was going to treat the unit. This was hard as she was going to work. That night everything was a mess again requiring time and effort to tidy again.

The tenant said she talked to her neighbour after finding bites and she told her it had been an ongoing issue in that unit and that was why the last tenant had left. She said her doctor prescribed medication to calm her allergic reaction to the bites. Since January 16, 2017, she said she had been living in a horrible situation with her belongings now infested with bed bugs. She said she bought new furniture when she moved in and had to throw all her bedding away and cover her mattress which is

stained. She said the bedding had stains impossible to remove because of the product used to spray the mattress. She claims in total \$5845 in compensation.

The landlord said he offered two other units if the tenant wanted to move but she refused. The tenant said he only offered one on the 4th floor that was unfinished and did not have enough light for her work. The manager said he offered one on the 6th floor as well and does not know why she refused that one. He also offered to allow her to break her fixed term lease but she said it was too much work to move again.

The landlord said she could cook in the unit, the kitchen wasn't sprayed. The last treatment was done February 7, 2017 and there were no further complaints. She did complain about some gaps and they were filled as of March 7, 2017. The tenant said she saw a bug come from the gap under the bathroom sink and told the technician. The landlord said the technician would have sprayed if he had been told of this and he did not at the final inspection on February 24, 2017. The gap was filled on March 7, 2017 and some others were filled earlier.

The tenant said she did not use the kitchenette at this time because of the spray residue, the limited space and her emotional stress in knowing there were bugs. She still can't get the product off the floor. She was told the product does not stain but she can't get the stains out of her mattress or bedding (which she threw out). The landlord said she was advised to bag all of her clothes and bedding before treatment and the first technician had only pre sprayed the baseboards.

Both parties provided statements, USB Sticks and documents and reports. All of the evidence was considered but only the relevant evidence is quoted. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant, in this case, the tenant, must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 7 of the Act states:

S. 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.

Although I find the tenant has undergone a very unpleasant and traumatic experience, I find insufficient evidence that her losses occurred because of the actions or neglect of the respondent landlord and in violation of the tenancy agreement or the Act. Contrary to the tenant's allegations, I find insufficient evidence that the unit did not meet health and safety standards. In the USB supplied by the landlord, the move-in inspection is conducted. I saw an immaculate unit with no visible signs of bugs or gaps in the walls or floors. Therefore, I find insufficient evidence that the landlord through act or neglect failed to comply with the Act, regulations or tenancy agreement in providing the unit. In support of this, I find the tenant moved in from December 15, 2016 to January 5, 2017 and did not find bites immediately. The records show that she reported an issue with bed bugs on January 16, 2017 and the landlord's manager immediately took steps to have it treated.

Although the tenant alleges this was an ongoing problem, not sufficiently treated before her move-in, I find the report of the pest control company dated September 25, 2016 states there was a minor bed bug problem on September 10, 2016 in this unit, surrounding units reported no bed bug problems and treatments were done in this unit on September 18 and 23, 2016 and the professional found no bed bugs anywhere. The report states the tenant at the time confirmed this and no bites. I find the landlord had no reason to believe that the problem was continuing into a new tenancy in December.

I find the landlord did not neglect to attend to the problem when reported. I find the second technician of the pest control company treated the unit after the tenant's report on January 23, 2017, and February 7, 2017 and the first technician did an initial pre spray on January 18, 2017. The second technician also inspected surrounding units according to the report in evidence. I find further the evidence shows the gaps between the heaters were filled January 21 and 22 and February 11, 2017. On February 24, 2017 when the tenant saw another gap and a bug, the landlord had it filled. The tenant confirmed in the hearing that there were no further issues since March 6, 2017 and all gaps were filled. I find the weight of the evidence is that the landlord attended diligently to cure the problem.

Although the tenant claimed damages for her losses, I find insufficient evidence that any of these losses were caused by act or neglect of the landlord or violation of the Act or

tenancy agreement. I find the tenant has failed to meet the onus of proving her claim on a balance of probabilities. Furthermore, I find she failed to mitigate her damages as required by section 7(2) of the Act. Although offered at least one other unit or to end her fixed term lease early, she declined and continued to live in the unit that she alleges contributed to her mental distress and physical suffering.

As the tenant confirmed that no further issues existed as of March 6, 2017, I decline to order further repairs or that they hire a different pest control company.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply as I find she has not proved on a balance of probabilities that the landlord was negligent or that the landlord's negligence or non-compliance with the Act resulted in her losses. The filing fee was waived.

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: April 13, 2017

Residential Tenancy Branch

