



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, PSF, PSF, RPP, LRE, OLC, MNDC, O

Introduction

This hearing dealt with the tenant's application filed August 16, 2017 under the *Residential Tenancy Act* (the "Act") seeking orders that the landlord comply with the Act, regulations, or tenancy agreement, make repairs, and provide services or facilities required by law. The application also sought compensation for loss or damage arising from breach of the Act, regulation, or tenancy agreement, an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), an order restricting the landlord's access to the rental unit, and other unspecified relief.

The tenant filed an amendment to her application on August 30, 2017 seeking orders requiring the landlord to provide laundry services without charge for all tenants in the building, compensate all tenants for the cost of furniture removal and disposal, and reduce rent for all tenants until alleged bedbugs are dealt with.

At the outset of the hearing the tenant indicated that she had not meant to apply for an order cancelling a 10 Day Notice, and that she had not received such a notice. The landlord confirmed that he had not issued a 10 Day Notice. The landlord expressed some frustration as he had understood that he would be able to obtain an order of possession if the tenant's application today failed. He may have received this information because the tenant had mistakenly indicated that she was seeking an order cancelling a 10 Day Notice.

Both parties attended the hearing and had a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions, and to respond to the submissions of the other party.

Preliminary issue

Service of the tenant's application and notice of hearing was not at issue. However, the landlord asked that the tenant's amendment be quashed because he had not received it until August 31, 2017.

As the tenant does not have standing to make claims on behalf of other renters in the building, I dismiss her amendment insofar as it seeks relief for other tenants. Otherwise, the tenant's amendment does not substantively add to the relief sought in her original application. Instead, it simply elaborates upon the monetary claims made in the original application.

Issue(s) to be Decided

Is the tenant entitled to an order restricting the landlord's access to the rental unit?

Is the tenant entitled to orders that the landlord comply with the Act, regulation, or tenancy agreement, make repairs, or provide services or facilities (i.e. is the tenant entitled to an order that the landlord treat the alleged bedbugs?)

Is the tenant entitled to compensation for damage or losses arising as a result of the landlord's breach of the Act, regulation, or tenancy agreement?

Background and Evidence

A copy of the tenancy agreement was in evidence. It records a fixed term tenancy beginning August 15, 2016 and ending August 31, 2017. Monthly rent is \$895.00 and is due on the first of the month. A security deposit of \$447.500 was paid at the beginning of the tenancy and remains with the landlord.

The landlord said that the tenant is over-staying the fixed term. He said that he has filed an application for an order of possession based on this, scheduled to be heard on September 29, 2017. However, as of the date of this hearing, he had not served his application on the tenant as a result of the misunderstanding set out above (that he could obtain an order of possession at today's hearing).

The tenant submitted that because the landlord had served her with a Notice of Rent Increase effective September 1, 2017, the tenancy has been continued on a month to month basis.

The tenant admitted that she has withheld rent for September. The landlord pointed to a Monthly Report for the tenant's income assistance indicating a "next cheque issue" date of July 26, 2017. He argued that because redirection takes several weeks, this Monthly Report shows that the tenant deliberately redirected September rent monies with the intention of not paying rent for the last month or more of her occupation, and that she knew the tenancy agreement expired on August 31, 2017 and that she was required to vacate at that time.

Tenant's submissions

The tenant alleges that there are bedbugs in her rental unit. She testified that she told the landlord as early as December, 2016 that she was being bitten and that her doctor had told her the bites were from bedbugs, but the landlord said the bites were from spiders coming inside.

She also said that she saw a pest control company outside of the building when she moved in and other times since then and has since spoken to other tenants and discovered that they also have bedbugs. One of these tenants is C, whose rental unit adjoins hers. The tenant suspects that insects have migrated from C's unit into hers through a hole underneath the bathroom sink, which she provided a photograph of.

The tenant's evidence included a letter dated August 24, 2017 to the landlord from TH, a tenant in another unit. TH's letter states that her unit has been treated twice as the result of a bedbug infestation, and that she has since found more living bedbugs in her home. TH also states that she has been advised by the pest control company that the whole building should be dealt with. TH was a witness at the hearing and gave evidence consistent with her letter. She also said that when she first raised the issue of the bedbugs with the landlord he accused her of having brought them with her when she moved in, and that both she and her daughter are suffering from anxiety as a result of the infestation in their unit. She has spent money on treatment and bought mattress protectors, but nothing has worked.

The tenant's other witness, GW, was required to leave during the hearing and did not give evidence.

The tenant submitted a laboratory investigation report signed by her doctor on July 24, 2017, with a notation from the doctor as follows: "common bed bug. confirmed infestation. requires pest-control intervention in residence." She also submitted a letter from a clinic doctor dated August 10, 2017 confirming she was seen that day "regarding an ongoing issue with bed bug infestation" and that she had brought in dead bed bugs in a container. The doctor's letter also states that the tenant "has multiple lesions to her chest and arms consistent with bed bug bites" and has advised the doctor that "she has had these lesions since moving into her current apartment August 2016." The tenant also submitted photographs taken in August of 2017 of various parts of her body with bites on them. She testified that her son, who stays with her sometimes, is allergic and has more severe reactions to the bites.

The tenant submitted that the landlord has been negligent in failing to comprehensively treat the bedbugs in the whole of the building in a timely way. Her written submissions include quotes from her research on bedbugs and assert that the elimination of bedbugs requires cooperation between the landlord and the pest manager for assessment, thorough inspection, identification, and eradication. She also submits that sometimes it is advisable to treat adjoining rooms even when bedbugs have not been discovered during inspection.

The tenant believes that the landlord served her with a letter requiring her to vacate (based on the fact that the tenancy is fixed term) because she has asked him to treat the bedbugs.

The tenant claims for the cost of cleaning supplies and medication (garbage bags, alcohol, Lysol, polysporin, Benadryl) in the amount of \$135.77 and has included receipts. She also asks that the washer and dryer be made available at no charge and that the landlord pay "furniture removal and dump fees if needed." She also claims \$500.00 for the time that she has had bedbugs, resulting in sleep deprivation and stress. She also seeks an order that she not have to pay rent until the issue is dealt with.

The tenant also alleges that the landlord named in this proceeding is verbally and emotionally abusive and set out some of the alleged instances of this in her written submissions. She also stated that he has instructed her not to put concerns in writing.

At the hearing the tenant indicated that she understood that she may have to vacate as a result of the fact that she signed a fixed term tenancy but asks that the landlord be required to fumigate before she vacates so that she does not transfer the bedbugs to new accommodation.

Landlord's submissions

The landlord does not believe that there are bedbugs in the tenant's unit. He said that after receiving the tenant's complaint in July of this year he had a pest control company investigate. The landlord's evidence included an invoice dated July 31, 2017 from a pest control company indicating that a 25 minute inspection of the tenant's unit revealed no live or dead bugs and no evidence of bedbug activity. The landlord argued that if the tenant had actually had bedbugs for 11 months as alleged, the investigation would have found evidence of this.

He also said in was in the suite four other times over the duration of the tenancy to perform various repairs and at none of these times did the tenant raise her concerns with bedbugs.

The landlord further stated that no reputable pest control company would treat the tenant's unit unless there was evidence of bed bugs.

The named landlord denied ever having suggested the tenant had spider bites and said that the tenant did has never drawn his attention to any bites.

The landlord asked that the tenant's request for compensation be dismissed, and suggested that she has manufactured the bedbug infestation in an attempt to "cash in."

Analysis

I find the tenant a credible witness and do not believe that she would have gone to the amount of work she has to research and write her submissions if she did not have bedbugs in her unit. Based on my assessment of the tenant's credibility, and on the testimony from the tenant's witness, the two doctor's letters, the lab report, and the tenant's photographs, I find that there are bedbugs in the tenant's unit and that the tenant has been severely affected by them for at least July and August of 2017.

Based on the evidence from the tenant and her witness, I also find that there are bedbugs in at least one other unit in the building.

The tenant may or may not have redirected her rent monies intentionally. I make no finding on this. However, I note that even if the tenant did so, this does not mean that she does not have bedbugs. In fact, the tenant admitted intentionally withholding rent because of the bedbugs. The tenant is cautioned that with holding rent for this reason is not permissible under the Act and is advised to speak with an information officer about her obligation to pay rent and the very limited exceptions that exist. The tenant is also cautioned that she must also pay while she residing in the unit after the expiry of the fixed term lease.

I do not accept the landlord's submission that the tenant has manufactured a bed bug infestation simply to avoid paying rent. Nor do I accept that her request that she be relieved from paying rent until the infestation is treated, or for the monetary order sought, represents "an attempt to cash in."

The landlord has not brought its own application for unpaid rent but is at liberty to do so. At the end of the day, any award I make in the tenant's favour can be offset against any award the landlord may obtain.

Section 32(1) of the Act requires a landlord to maintain residential property such that it complies with the health, safety, and housing standards required by law. Bedbugs are not acceptable in a rental unit, and the eradication of bedbugs requires the landlord to act aggressively and in a coordinated manner, which may require treating all the units at once.

Based on this, and on my conclusion that there are bedbugs in the tenant's unit as well as in other units in the building, I order the landlord to have the issue investigated further by another certified pest control company, on the terms set out below.

I also order the landlord to act on the recommendations of the pest control company before the tenant vacates her rental unit. The terms of my order are set out in more detail below.

As the tenant has suffered the effects of bedbugs for many months, and has put forward substantive proof of the effects of the bites over July and August, I award her the \$500.00 requested for breach of quiet enjoyment of the rental property. I also award the \$137.00 in supplies.

The tenant could have submitted proof of the cost of increased laundry, but did not. I do not order the landlord to provide laundry free of charge as this is too broad an order. The tenant's claim for the cost of moving and disposing of furniture are premature as she has not yet incurred those costs.

Conclusion

Based on the above, I make the following orders:

1. I order the landlord to immediately engage a certified pest control company other than the company it has already engaged to:
 - (a) inspect the tenant's rental unit and inspect what the pest control company considers a representative sample of other units in the rental building; and
 - (b) provide the landlord with a written report and list of recommendations for dealing with bedbugs in the tenant's unit, including an assessment of whether treatment of the rental building in its entirety is recommended, **no later than September 29, 2017**.
2. I further order the landlord to:
 - (a) immediately share the pest control company's written report with the tenant; and
 - (b) comply with all recommendations of the pest control company **before the tenant vacates the rental unit and no later than October 6, 2017**. (This timing is to ensure that the tenant can relocate without bringing bed bugs with her to other accommodation).

Based on my award of \$137.00 for supplies and \$500.00 for loss of quiet enjoyment for the duration of the tenancy to date, I issue a monetary order in the tenant's favour for \$637.00. As there is some evidence that this tenancy may have legally ended as of August 31, 2017, I consider it more appropriate to issue this monetary order than allow the tenant to withhold rent. If the landlord makes a claim against the tenant for another amount and is successful, the amounts owing may be offset against one another.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act and is final and binding unless otherwise specified in the Act.

Dated: September 18, 2017

Residential Tenancy Branch

