



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAS TEA INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, MNDC, FF

Introduction

The tenants apply for an order that the landlord comply with the *Residential Tenancy Act* (the “Act”) and/or the tenancy agreement and an order that the landlord provide a service or facility. The application arises as a result of the discovery of bed bugs in the rental unit, in another unit earlier and the landlord’s response to the discovery.

The tenants did not appear to make a monetary claim in their application. However, in the details of the tenants’ request for a compliance order they have made a request that the landlord reimburse them for the furniture they had to dispose of and for the cost of a hotel.

Eighteen days prior to the hearing the tenants filed a typed document claiming \$7229.55 for bins, totes, garbage bags, bed bug pillow cases and mattress covers, laundry costs a hotel for one night, a new mattress and for general damages for trauma as the landlords’ son had an allergic reaction to bed bug bites. I consider this to be fair notice and details of a monetary claim.

Preliminary inquiry reveals that the applicant Mr. N.J. is not a tenant. He is the tenants’ two year old son.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the landlord responsible for the tenants' loss? Is there a reasonable need for a compliance order or an order that the landlord provide a service or facility?

Background and Evidence

The rental unit is a one bedroom apartment in a 49 unit, three level apartment building. There is a written tenancy agreement though neither side presented a copy of it. The tenancy started in June 2014. Currently the monthly rent is \$1197.00.

In late November 2017 the tenant Ms. K.J. discovered a rash on her child's face. The boy was taken to the doctor who diagnosed impetigo. Soon Ms. K.J. developed a rash and it was diagnosed as impetigo as well.

Ms. K.J. began to research online and found a reference to bed bugs that might cause the rashes. She checked her mattress and discovered a bug.

She immediately informed the building manager, Mr. C.G.. She also asked him whether anyone else in the building had reported bed bugs and Mr. C.G. told her "yes" her immediate neighbours, the F.'s had them.

Ms. K.J.. spoke to the neighbours, who told her that they discovered them in June, the landlord has been treating them and that they still had bed bugs. Ms. K.J. says the neighbours also told her that the building manager Mr. C.G. had told them not to tell anyone about their bed bugs.

One of the neighbours, Ms. S.F. provided a signed statement confirming that her rental unit had bed bugs. She wrote:

My wife and I first discovered bed bugs around June or July 2017. Even though we reported it, they did not spray until about a month later. After that, they did not spray again in 2 weeks time, which you are supposed to do to kill all the eggs left behind. Therefore; the bed bugs came back, and we sprayed again about a month after the first spraying. Once again, they did not do a follow up spray, and the bed bugs came back. We then sprayed again about a month after the last spraying. We were told that we were not allowed to spray again because it costs money, so we were left to our own devices and the bugs came back. We used a steamer to help contain the bugs. We were doing this until my neighbour came to us and said it had spread to her apartment. We then were sprayed again on Dec. 26 2017, and are waiting to do a follow up spray to get the eggs left over from the last spraying.

Ms. C.G. immediately began bagging her belongings as a first step to eradication. She confirmed that the rash she and her child had come from bed bug bites.

The building manager Mr. C.G. contacted the pest control company the landlord had been using for the neighbours but it was not available. He immediately retained a second pest control company which sent workers to attend to the eradication process.

On December 19 the pest control company came to spray the tenants' rental unit and the tenants took out a hotel room so as to be away, out of health concerns. At present the pest control people have returned to the tenants' rental unit to conduct follow ups. Ms. K.J. indicates that all is good so far.

The tenants meanwhile have been put to the extraordinary task of bagging their belongs away where bugs can't get to them, laundering all their launderables and replacing a rather expensive mattress and box spring. In addition they have been put to the stress of dealing with a child in ill-health as a result of being bitten by bed bugs.

The landlord's representative Ms. T. testifies that the landlord acted immediately when the neighbours reported bed bugs in June 2017. A pest control company was retained to attend to the matter. That company attended at the neighbours on June 29, September 6 and October 17. She says "no other units had signs" though it would appear that the pest control company did not check with these tenants. She says the landlord never tried to hide the fact that it was treating the neighbours' rental unit for bed bugs.

Mr. C.G. the building manager testified that he does not recall telling the neighbours not to tell other tenants about their bed bug problem. He only recalls asking them not to put their "stuff" in the hallway.

He says the first pest control company was very good. Two of their employees came three or four times to check the neighbours' rental unit. He says the bugs could come from anywhere and that it could happen to anyone.

It appears that when the second pest control company was called to deal with these tenants' report of a bed bug, they canvassed most but not all of the tenants' immediate neighbours in the building.

Analysis

Ms. K.J. argues that the first pest control company should have resprayed the neighbours' apartment two weeks after the first spraying, so as to catch newly hatched bugs. She says she has researched this subject and found that to be the appropriate plan.

She also argues that the landlord's breach their duty in the circumstances by not canvassing or warning the neighbours, including her, when bed bugs were first discovered. She offers nothing in the way of expert or professional opinion to establish that proposition. Of note however, she filed a public service note published by Vancouver Coastal Health that indicates that once bed bugs are found and reported to the landlord the following steps should be taken:

PROPERTY MANAGEMENT COMPANY & OWNER

- Have a plan in place and check surrounding units
- Act quickly so that you treat one room instead of entire building
- Contact a reputable licensed pest control company
- Keep records of pest control service and pest complaints
- Implement a monitoring program throughout the building - an integrated pest management plan (IPM)
- Inform tenants of the IPM plan and provide them with information on preventing infestations and the spread of bed bugs
- Educate management and tenants on what bed bugs look like and the signs of an infestation
- Ensure the correct disposal of goods from infested suite to avoid the further spread of bed bugs
- Have a plan or provide assistance for tenants who are unable or unwilling to adequately prepare units for treatment

Had she been warned back in June, she feels she could have and would have taken preventative steps, thus avoiding the crisis she encountered in November and on.

Respraying

Section 32(1) of the *Act* states:

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.

It is generally taken as the rule that once a tenant reports bed bugs in an apartment building the landlord is responsible to take reasonable steps to attend to their eradication in a timely manner.

In this case when the neighbours reported bed bugs the landlord acted quickly and responsibly by retaining a pest control company to deal with the matter. Mr. C.G. says he did what they told him to do and he left matters in their hands.

The proposition that the pest control company should properly have resprayed the neighbours' rental unit two weeks after the first spraying has not been proved. Despite the education she has given herself on the matter, Ms. K.J.'s view is, respectfully, a layman's opinion and of little weight. Such a finding would require confirming evidence of an expert or professional nature. It is not known what the first pest control company found in the neighbours' rental unit. There may have been a valid reason to act as it did.

Checking Surrounding Units

I find that the landlord's decision not to check surrounding units for bed bugs was a failure on its part to carry out its duty. The Coastal Health notice cited above is a public notice and in my view sets out what a landlord acting in a reasonable manner should do. It says that when bed bugs are detected in an apartment the property manager should have a plan in place and check surrounding units. In this case that was not done when it should have been done, that is, when the neighbours first reported bedbugs and the landlord's pest control company confirmed their presence in June.

Though the landlord may have left the matter of bed bugs in the hands of the first pest control company, it is responsible for the job that company does.

I find that the landlord breached its duty to maintain the residential property in a state of repair that made it suitable for occupancy.

I find that in the circumstances of this case, had these tenants, the parents of a two year old, been forewarned of bed bugs in an adjacent suite they would have been on alert for signs in their own rental unit. By the time their son contracted his rash, if not before, they would have known to alert the landlord and avert most if not all of the damage and

inconvenience that they ultimately suffered. The landlord did not forewarn the tenants and as a result are responsible for damage and loss suffered by the tenants that was reasonably the result of that failure.

Regarding the tenants' claimed loss, I find that the expense of bins, totes, bed bug pillow cases and garbage bags to be a fair expenses incurred for bagging a sealing clothing. I award the tenants \$225.43, as claimed.

I award the tenants \$277.73 for mattress coverings.

I award the tenants \$65.00 for laundry costs over and above the \$120.00 already provided by the landlord.

I accept the tenants' statement that due to lack of notice of a spraying in their rental unit they were obliged to take a hotel room for a night, out of health concerns over the chemicals being sprayed. I consider that to be a proper concern, especially with a child in their care. I accept that modest accommodation could not be secured on short notice and that a hotel was the only accommodation reasonably available. I award the tenants \$234.51 for the hotel cost, as presented.

It is the tenants' uncontradicted evidence that as a result of the bed bug infestation in their rental unit they were required to dispose of their mattress and child's mattress. I allow their claim for the child's mattress at \$99.00, as presented.

The tenants seek \$4827.88 for replacement of their "Simmons Beautyrest Black" mattress (and box spring). This seems an extraordinary cost for a mattress. However, they show that to be the mattress they had and they show \$4559.97 plus taxes to be its current replacement cost. In light of the undisputed evidence on this item I award them \$4827.88 but reduce that award by a factor of 25% as the existing mattress was five years old. To award the full cost of a new mattress would put the tenants in a better position than they are entitled to be. I therefore award them \$3620.91.

Finally, the tenants claim for "trauma" relating to the rashes Ms. J. and her son suffered. I agree that had the tenants been properly forewarned about bed bugs in the neighbours' rental unit the suffering of both, the extra doctor visits, the two rounds of topical and oral antibiotics could likely have been avoided.

At common law damages for "pain and suffering" or inconvenience are not normally awarded in the case of a breach of contract (the tenancy agreement) or breach of

statute. However, the *Residential Tenancy Act* (the “Act”) provides that a tenant is entitled to “damage and loss” resulting from a landlord’s breach of the Act or the tenancy agreement. Residential Tenancy Policy Guideline 16, “Compensation for Damage or Loss” provides:

A. LEGISLATIVE FRAMEWORK

Under section 7 of both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*:

- _a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- _the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the *Residential Tenancy Act* and section 60 of the *Manufactured Home Park Tenancy Act*, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- _determine the amount of compensation that is due; and
- _order that the responsible party pay compensation to the other party.

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- _loss of access to any part of the residential property provided under a tenancy agreement;
- _loss of a service or facility provided under a tenancy agreement;
- _loss of quiet enjoyment (see Policy Guideline 6);
- _loss of rental income that was to be received under a tenancy agreement and costs associated; and
- _damage to a person, including both physical and mental.

In light of the foregoing I consider the tenants’ claim for “trauma” arising from the medical condition suffered by her to be in the nature of physical and mental damage to the person.

The landlord’s representative argued that the medical condition of the tenant Ms. J. and her son was the result of a misdiagnosis. I think it clear that the doctor failed to diagnose the cause of the rashes as bed bug bites but it has not been shown the diagnosis that was made was not a reasonable diagnosis based on the patients as presented and so the possible suggestion that medical negligence was an intervening or contributing factor must fail.

As this forum deals with disputes between landlords and tenants, it is not within the power of an arbitrator acting under the Act to make awards in favour of person like the tenant’s child, who is neither a landlord n or a tenant. The tenants must seek any recourse in that regard in the courts.

Having regard to all the circumstances described by the tenant Ms. J. I award her \$500.00 as damages for having to put up with the rash caused by bed bug bites as well as the emotional suffering she experienced having to deal with her child's suffering and having to provide for his care.

Conclusion

The tenants are entitled to a monetary award totalling \$5022.58 plus recovery of the \$100.00 filing fee. The tenants will have a monetary order against the landlord in the amount of \$5122.58.

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 14, 2018

Residential Tenancy Branch