



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RR, ERP, PSF, LRE, MNDCT, MNRT, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for the cost of emergency repairs to the rental unit pursuant to sections 33 and 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that the Application for Dispute Resolution (the Application) and an evidentiary package was personally served to the landlord on January 04, 2018. The

landlord confirmed receipt of the Application and the evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with these documents.

The landlord confirmed that they were also served personally with two other evidentiary packages from the tenant on January 16, 2018, and January 22, 2018. In accordance with section 88 of the *Act*, I find the landlord was duly served with these documents.

The landlord testified that they personally served two evidentiary packages to the tenant on January 05, 2018, and January 29, 2018. The tenant confirmed that they received these evidentiary packages. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

At the outset of the hearing the landlord stated that their last name is spelled incorrectly. In accordance with Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I have amended the respondent's last name on the Application.

Issue(s) to be Decided

Is the tenant entitled to an order to the landlord to make emergency repairs to the rental unit?

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to a monetary order for the cost of emergency repairs to the rental unit and compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order regarding a disputed additional rent increase?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord and the tenant agreed that this tenancy began on April 01, 2017, with a monthly rent of \$800.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$400.00

In addition the tenant also provided in evidence:

- a copy of a letter to the Residential Tenancy Branch (RTB) dated January 04, 2018, with a list of items regarding their tenancy including but not limited to the landlord not providing rental receipts, leaky bathroom faucet, a burner that does not work on the range, noisy fridge, the landlord coming into the unit and closing all the windows, bed bugs being noticed in the middle of December 2017, the tenant spending money on bed bug traps and insecticide, the landlord stating that it happened to her son before and they had it treated at the time, the tenant providing a letter on December 31, 2017, requesting pest control for the bed bugs and a dirty carpet in the rental unit which is infested with bed bugs;
- a copy of a letter to the RTB dated January 05, 2018, stating the following issues which need to be addressed including bed bug extermination, replace carpet, replace leaky bathroom faucet, replace old fridge, replace old range, issuance of rental receipts and \$10,000.00 in pain and suffering due to bed bugs.
- a copy of a letter to the RTB dated January 16, 2018, stating that the landlord has had the range and bathroom faucet repaired, that the tenant has been bitten by bed bugs for a long period of time and that the pest control inspector stated that the bed bug infestation had been around for at least six months;
- pictures of bed bugs in a jar, in the mattress and on blood stained bed sheets as well as pictures of ginger clumps on the tenant's bed put there by the landlord and bed bug bites on various places of the tenant including face and hands; and
- a copy of a letter to the RTB dated January 22, 2018, listing the physical and mental trauma the tenant has endured due to the bed bugs in the rental unit including the tenant being bitten by bed bugs which has affected their sleep, bedding sheets and comforter needing to be replaced, additional expenses to caregiver to assist in moving items in and out of the rental unit due to bed bug treatment and the tenant not being able to eat at home. In this letter the tenant demands rental receipts, to only deal with the landlord who lives on the premises, not her family members, and for the carpet to be stripped off and replaced.

The tenant's monetary claim is for:

- \$10,000.00 for compensation for monetary loss or other money owed for bed bug infestation, illegal entry into unit without consent, failure to get pest control, failure to comply with agreed upon rent of \$800.00, failure to provide rental receipt and for the tenant's stress;
- \$10,000.00 in rent reduction for pain and suffering from pest infestation and mental distress from landlord and changing of the carpet in the rental unit; and
- \$10,000.00 to be paid back for the cost of emergency repairs the tenant made during the tenancy

The landlord provided in evidence:

- a letter from the landlord to the tenant dated January 05, 2018, in response to a tenant's letter of December 31, 2017, requesting three available dates for the pest control company to come and deal with the bed bugs;
- a written response from the landlord regarding the tenant's claims which states that the landlord has never previously had issues with bed bugs, that the landlord tried to use home remedies when informed in writing of the bed bug problem until able to find a pest control company, that the landlord informed the tenant on January 2, 2018, that they were trying to find a pest control company and that the tenant stated at that time that he was not able to allow access to the rental unit for bed bug treatment until January 17, 2018. The landlord's response further states that on January 13, 2018, the pest control company stated that the bed bug infestation happened less than six months ago. The landlord's statement also indicates the landlord only asked the tenant to voluntarily pay a portion of the utilities, which the tenant declined and that the landlord did not pursue any further action or request to increase the rent to \$950.00. Finally the landlord's response states that the landlord has never entered the rental unit without the tenant's consent.
- a copy of the receipt for the bed bug treatment;
- e-mails exchanged with various pest control companies confirming that removal of carpets is not required for bed bug treatments; and
- pictures of the rental unit before being rented out which show the carpets were in good condition and clean prior to the tenancy commencing.

The tenant testified that he has bed bugs in his rental unit and that the landlord presented a letter to him at the beginning of January 2018 with three dates to have pest control enter the rental unit to treat the bed bugs but that the tenant was not available for the treatment to be completed until January 17, 2018. The tenant further testified that when the pest control company came to the rental unit they advised him that the bed bug infestation occurred in the last six months. The tenant stated that there are bed

bugs under the carpet and that the pest control company did not treat the carpet for bed bugs. The tenant submitted that the bed bug treatment was only 25 minutes in duration and that another treatment will have to be done in three weeks. The tenant stated that the bed bug treatment should have been more thorough.

The tenant submitted that when he first looked at the rental unit it was dirty and he asked for it to be cleaned before he moved in. The tenant testified that there was a flood of sewage back up in the unit which affected the condition of the carpet. The tenant stated that the landlord has not been giving receipts for rent paid in cash. The tenant testified that when the tenant is home, the landlord just opens the door and comes into the unit to close windows and turn down the thermostat.

The landlord testified that the cleaning of the rental unit was never mentioned to the landlord as an issue and referenced the pictures provided in evidence which show the condition of the unit in February 2017. The landlord submitted that the landlord on premises only enters the unit when she comes to collect the rent and it is with the tenant's consent. The landlord stated that the landlord on premises does not close windows or adjust the temperature in the rental unit.

The landlord testified that when the tenant verbally complained about the bed bugs in December 2017, the landlord used home remedies to address the situation until able to get a pest control company to the rental unit. The landlord stated that they verbally communicated with the tenant on January 02, 2018, of their efforts to retain a pest control company. The landlord testified that the pest control company advised him that the bed bug infestation is in the early stages and they could not have been there for longer than six months at the most.

The landlord submitted that they contacted multiple pest control companies to see if the removal of carpets was necessary for the bed bug treatment and referred to their evidence that all companies contacted about the removal of the carpet indicated that removal of the carpets or any other action was not necessary for successful bed bug treatment.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulations (the Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

\$10,000.00 for compensation for monetary loss or other money owed for bed bug infestation, illegal entry into unit without consent, failure to get pest control, failure to comply with agreed upon rent of \$800.00, failure to provide rental receipt and for the tenant's stress.

I find the tenant bears the burden to prove that the infestation of bed bugs in the rental unit is due to the actions or neglect of the landlord.

I have reviewed all documentary evidence and affirmed testimony. Although there is no dispute that the rental unit has become infested with bed bugs and that damage has occurred, I find that the tenant has not demonstrated that the bed bug infestation is due to the actions or neglect of the landlord.

I find the landlord and the tenant have both testified that the pest control company advised them that the bed bug infestation was in its early stages and happened within the past six months. As the pest control inspection happened on January 13, 2018, when the pest control company came to the rental unit to do an estimate and determine the stage of infestation, I find the infestation occurred at some point in July 2017. I find the tenant took possession of the rental unit on April 01, 2017, three months prior to the six month window the pest control company gave for the infestation to have occurred.

Based on the written evidence, affirmed testimony of both parties and a balance of probabilities, I find the bed bug infestation began when the tenant had possession of the rental unit and it is not the actions or neglect of the landlord which has resulted in the bed bug infestation. I find there is no evidence provided that supports a previous infestation of the rental unit before the tenant had possession of it.

I further find the landlord responded to the infestation of bed bugs, when informed of it in writing at the end of December 2017, in a reasonable time frame with home remedies until able to find a company to do the bed bug treatment. I find the tenant and the

landlord both testified that the landlord provided three options for dates in writing to the tenant on January 05, 2018, for the bed bug treatment to happen. I find the tenant refused to allow the bed bug treatment until January 17, 2018, and did not provide any actual reason for the delay in allowing the pest control company access for treatment.

For the above reasons, I find the tenant did not fulfil their obligation, under section 7 (2) of the *Act*, which requires the tenant to mitigate or minimize the damage or loss. I find that any prolonged stress or suffering of the tenant was due to the tenant refusing to allow access for the pest control company to do the bed bug treatment for almost two weeks from the time that the landlord offered to have the treatment done.

I further find there is no evidence provided that the landlord enters the rental unit without the tenant's consent. I find that the tenant has testified that the landlord only comes into the rental unit when the tenant is home. I find the tenant has the right to refuse entry when the landlord attends the rental unit and the tenant did not provide any testimony that they clearly expressed their objection to the landlord regarding their entry into the rental unit. I find that when the tenant refused entry for treatment for bed bugs, the landlords were respectful of the tenant's wishes and waited until the tenant was ready to allow access.

I find that there is no written evidence provided of a requested additional rent increase from the landlord or that the tenant has been pressured to pay more rent than agreed upon in the tenancy agreement. In the absence of written evidence to the contrary, I accept the landlord's submission that they approached the tenant about whether the tenant would be willing to pay a portion of the utilities, that the tenant declined and the landlord did not pursue the matter any further. I find that the tenant has not demonstrated any monetary loss or damage that occurred as a result of the landlord's request for the tenant to pay a portion of the utilities.

Although the landlord did not dispute that they have not provided rental receipts to the tenant for rent paid in cash, the tenant has not provided any evidence of financial loss or other damages under the *Act*, regulations or tenancy agreement which have been incurred by the tenant as a result of rent receipts not being provided.

For the above reasons I dismiss the tenant's claim for compensation for loss or other money owed under the *Act*, regulations or tenancy agreement, without leave to reapply.

\$10,000.00 rent reduction for pain and suffering from pest infestation, mental distress from landlord and thorough cleaning of carpet in the rental unit.

The tenant has the burden to prove that the landlord has not provided services or facilities required by law, that the carpet in the rental unit was not clean at the beginning of the tenancy and that there was a backup of sewage from toilet which further damaged the carpet. The tenant also submits that the carpet in the rental unit should be removed to treat bed bugs and that this was not done by the pest control company.

I find the tenant has not provided any evidence of the of the carpet being in poor condition at the beginning of the tenancy or that they addressed this with the landlord in writing or that there was any sewage back up which damaged the carpet and required it to be cleaned. I further find that the landlord has provided evidence, in the form of e-mails from the pest control company they used as well as other pest control companies, that the carpet does not need to be removed or any other cleaning to be done for the successful treatment of bed bugs.

As I have already found that it is not the landlord's actions or neglect which are the cause of the bed bugs in the rental unit, that the tenant delayed the landlords from having the pest control company do the bed bug treatment and that removal or cleaning of the carpet is not necessary for treatment of the bed bugs or for any other reason, I dismiss the tenant's claim for a rent reduction for pain and suffering from pest infestation and mental distress from the landlord.

\$10,000.00 to be paid back for the cost of emergency repairs the tenant made during the tenancy and for emergency repairs to be completed.

Section 33 of the *Act* allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time. Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

I find that the tenant has not provided any written evidence of costs incurred by them for any emergency repairs completed or that any emergency repairs were required under section 33 of the *Act*. I find that the bed bug infestation does not meet the definition of an emergency repair as the safety of the tenant was not in question, only their comfort. Even if the safety of the tenant was in question, I find the landlord responded in a

reasonable amount of time and the tenant did not allow the repairs to be done for almost two weeks from the date that the landlords first offered available dates. I further find the landlord is the one who paid for the cost of the pest control company to do the bed bug treatment.

For the above reasons, I dismiss the tenant's claim to be paid back for the cost of emergency repairs and for emergency repairs to be completed, without leave to reapply.

Part 3, section 41 of the *Act* states that a landlord must not increase rent except in accordance with sections 42 and 43 of the *Act*, which only allow for a rent increase served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenant. As I have already found that there is no written evidence of an additional rent increase given to the tenant from the landlord, I dismiss the tenant's request to dismiss an additional rent increase, without leave to reapply.

Section 70 of the *Act* allows for an Arbitrator to suspend or set conditions on a landlord's right to enter the rental unit if they are satisfied the landlord is likely to enter the rental unit in contravention of section 29 of the *Act*, which requires the landlord to give 24 hours written notice before entering the rental unit.

I find the tenant has not provided any testimony or evidence that the landlord has entered the rental unit when the tenant is not present. I further find the tenant has submitted in their testimony that the landlord only enters the rental unit when the tenant is present. I find the tenant has not provided any testimony that they have indicated to the landlord that they have refused entry, which the landlord has disregarded.

For the above reason, the tenant's request to suspend or set conditions on the landlord's right to enter the rental unit is dismissed, without leave to reapply.

Section 62(3) of the *Act* allows the director to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies. When a party makes a claim for the landlord to comply with the *Act*, the burden of proof lies with the applicant to establish the claim.

Section 26 (2) of the *Act* establishes that a landlord must provide a tenant with a receipt for rent paid in cash. I find that the landlord did not dispute that they have not been providing receipts to the tenant for rent being paid in cash.

I **order** the landlord to provide receipts to the tenant for rent paid in cash in pursuant to section 26 (2) of the *Act*.

As the tenant has not been successful in the majority of their Application including all monetary claims, I dismiss their request to recover the filing fee from the landlord without leave to reapply.

Conclusion

I **order** the landlord to provide receipts to the tenant for rent paid in cash in pursuant to section 26 (2) of the *Act*.

The rest of the tenant's Application is dismissed, without leave to reapply.

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 13, 2018

Residential Tenancy Branch