



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding XENON DEVELOPMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

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

- a monetary award for damage or loss pursuant to section 67;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent JR (the "landlord").

As both parties were present service of documents was confirmed. The parties testified that they were in receipt of the tenants' application for dispute resolution and their respective evidence package. I find that the parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee for the application from the landlord?

Background and Evidence

This tenancy began in November, 2017 and ended on January 31, 2018. The monthly rent was \$1,350.00 and a security deposit of \$675.00 was paid by the tenants at the start of the tenancy.

The tenants gave evidence that shortly after moving in to the rental unit they discovered bed bugs in the suite on November 8, 2017. The landlord made arrangements for pest control within a week of the initial report on November 16, 2017. The landlord subsequently sprayed the unit on November 30, 2017 and December 7th or 8th, 2017. Despite these efforts the tenants continued to discover bed bugs in the suite.

The tenants vacated the suite and resided with friends during the time that the landlord was dealing with the pest control issue. The tenants ultimately gave notice and ended their tenancy in January, 2018 as they felt the rental unit was uninhabitable.

The tenant seeks a monetary award in the amount of \$2,210.00 for the rent they paid to their friend when they stayed with them, compensation for rent paid to the landlord for the period they were unable to occupy the rental unit and the cost of the furniture they abandoned in the rental unit.

The landlord states that they took all reasonable action in arranging for pest control services to attend the rental building. The parties gave evidence that the landlord has already provided the tenants credit of \$945.00 and discounted the January, 2018 rent by that amount for the inconvenience. The landlord stated that the tenant's furniture remains in the rental unit and is available should they choose to remove it.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss. In the matter at hand the parties agree that a bed bug infestation occurred in the rental unit. The parties also gave evidence that the landlord took action by arranging for pest control services to attend. When the fumigation efforts were not entirely successful the tenants chose to end this tenancy and abandoned much of their furniture in the rental unit. The tenant provided written evidence of the cost of the furniture and the money spent for alternate accommodations when they were not in the rental unit.

Based on the evidence of the parties I find that the tenant has not shown on a balance of probabilities that the damages and loss suffered are attributable to the landlord. There is no evidence that the bed bugs originated or were caused by the landlord. The landlord is obligated to act quickly and responsibly when informed of the problem and I find the evidence shows that the landlord took reasonable action in a prudent period. I therefore find that the landlord acted

in accordance with their obligation under the Act and regulations. I find that the tenants have not established grounds to prove that the landlord is liable for the damages or losses which resulted from the bed bug issue in the rental unit. There is no evidence that the bed bugs were caused by the landlord or that the landlord did not act reasonably and prudently at all times in dealing with the issue.

I further note that the tenants claim for replacement of furniture but the parties gave evidence that the furniture remains in the rental unit, available should the tenants pick them up. The tenants chose to abandon their items and I find that the cost of replacement is not something that was caused by the landlord.

I dismiss the tenant's application without leave to reapply.

As the tenants' application was not successful the tenants are not entitled to recover the filing fee for this application.

Conclusion

The tenants' application is dismissed in its entirety 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: March 8, 2018

Residential Tenancy Branch