



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Management Solutions and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This is an application under the *Residential Tenancy Act* (the *Act*) by the tenants for:

- a Monetary Order pursuant to Section 67 of the *Act*; and
- reimbursement of the filing fee pursuant to Section 72 of the *Act*.

Both the landlord and the tenants attended the hearing. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both the landlord and the tenants confirmed receipt of each other's evidentiary packages, while the landlord confirmed receipt of the tenants' application. All parties are found to have been duly served in accordance with the *Act*.

Issues to be Decided

Are the tenants entitled to a Monetary Order for damages or loss pursuant to Section 67 of the *Act* and reimbursement of the filing fee pursuant to Section 72?

Background and Evidence

Both parties testified they entered into a written month-to-month tenancy agreement beginning September 1, 2017 for rent of \$985.00 per month. The tenants provided a security deposit of \$467.50 which is still held by the landlord. The tenancy is ongoing.

The tenants claim \$1,452.50 from the landlord, being the amount of rent they paid for the unit for approximately a one-and-a-half-month period (from September 14, 2017 to November 6, 2017) during which time wasps infested the unit making it unsuitable for occupation.

The tenants stated they first became aware of wasps in the apartment in early September 2017. They attempted to deal with the wasps themselves through spraying. This was ineffectual.

On September 12, 2017, the tenants notified the landlord of the situation with the wasps. On September 14, 2017, the parties moved out of the unit notifying the landlord they could not stand it any longer. The tenants did not return until November 6, 2017 when the wasps and their nest was eliminated. The tenants continued to pay rent to the landlord and currently live in the unit.

The tenants described the presence of the wasps in the unit as follows:

- The number of wasps began with 8-10 a day and increased on some days to 40-50 throughout the period from early September 2017 to November 6, 2017;
- The tenants' sleep was disturbed as wasps would enter their bedroom at night;
- The wasps did not sting but were "flying around all the time" and "dying on the windowsills", necessitating sweeping and disposal of the dead insects;
- The female tenant, who was pregnant, was especially disturbed;
- The tenant BM said it was "horrible" and the premises were "uninhabitable"; and
- The pictures submitted by the tenants show hundreds of dead and dying wasps on window sills and in a toilet bowl for disposal.

When they left the apartment, the tenants stayed with family for a few days. Then they rented other premises for the one-and-a-half-month period in which they did not live in the apartment.

The tenants and the landlord communicated regularly throughout the period in which the wasps were present in the unit.

The tenant BM said he came back to the unit every couple of days during the one-and-a-half-month period to check on the number of wasps and to clean up the dead and dying insects. He testified November 6, 2018 was the first day the tenants could move back to the apartment.

The landlord testified to the following efforts to eliminate the wasps:

- On September 15, 2017, a pest management company representative retained by the landlord attended to the premises; no efforts to contain the wasps were taken as the representative expressed the opinion the wasps would disappear soon as the weather was getting colder;
- As the wasps continued to come into the unit, a representative of the same company came to the premises on a second occasion sometime in early October (2 or 3 weeks later) and sprayed chemical wasp spray inside the home;
- As the wasp situation remained unchanged, on October 20, 2017, a representative of the same company came to the premises and expressed the opinion there was probably a wasp nest in the walls;
- On October 31, 2017, a second company retained by the landlord came to the premises and quickly located the hive in the walls of the building and gassed it;
- As not all the wasps were eliminated, on November 2, 2018, the second company repeated the gassing, eliminating the remainder of wasps;
- The company warned the tenants not to occupy the unit for at least two days after each gassing because of the toxic effect of the chemicals used in gassing the wasps.

Other than the days after each gassing (October 31 and November 2, 2017), the landlord testified the unit otherwise remained habitable. She stated she herself could not have lived there, but “it depended on the person”.

The landlord agreed to reimburse the tenants for the filing fee for this application.

Analysis

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

32 (1) 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.** (*emphasis added*)

Under Section 67 of the *Act*, if damage or loss results from a tenancy, an Arbitrator may determine the amount and order a party to pay compensation to the other party. 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 it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once established, the claimant must then provide evidence to verify the actual monetary amount.

In this case, the onus is on the tenants to prove their entitlement to a monetary award.

The landlord maintains she did everything possible to deal with the wasps in a timely manner. She points to three visits by the first company and two visits by the second company. She submitted invoices totalling \$357.50 for the work of the two companies.

The wasps were only eradicated after a period of more than six weeks. Having reviewed the timeline of events and the invoices submitted by the landlord, I find the landlord had an obligation to deal with the wasps and failed to do so in an effective and timely manner.

The parties agree there were wasps in the unit during the one-and-a-half-month period the tenants did not occupy the unit. The landlord maintains the tenants exaggerated the number of wasps and the unit remained suitable for occupation except for the period immediately after each gassing.

I accept the tenants' evidence and conclude the presence of the wasps was significant enough to make the unit unsuitable for occupation for the one-and-a-half-month period. I do not find the landlord's position reasonable that the unit was habitable during this period. I find the tenants have met the burden of proof under Section 67.

The parties agree the tenants paid rent during this period and they lived elsewhere. I find it unreasonable of the landlord to expect the tenants are responsible for rent during the period in which the unit was unsuitable for occupation.

I therefore award the tenants a Monetary Order in the amount of \$1,452.50 for reimbursement of rent in the premises for the one-and-a-half-month period of vacancy as claimed. I also award the tenants \$100.00 for reimbursement of the filing fee for a total Monetary Order of \$1,552.50.

Conclusion

The tenants are granted a Monetary Order in the amount of \$1,552.50. This Order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the Order in the Provincial Court (Small Claims) to be enforced as an Order of that Court.

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: June 14, 2018

Residential Tenancy Branch