



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on July 20, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for compensation for loss or other money owed; and,
- Recovery of the cost of the filing fee.

The Tenant attended the teleconference hearing; however, the Landlord did not. The Tenant testified that she served the Landlord with her application package and evidence on December 6, 2017, by registered mail. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received this package on December 11, 2017, the fifth day after its registered mailing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Tenant stated that the tenancy started on October 1, 2016, and ended on November 30, 2017, the day the Tenant left the rental unit. The Tenant stated that monthly rent was \$1,550.00 from October 1, 2016, up until October 1, 2017, at which point it went up to \$1,600.00.

The Tenant is seeking compensation because she stated she had to leave the rental unit due to ongoing issues with mice. The Tenant provided a monetary worksheet showing that she is looking for recovery of several expenses related to having to move out of the rental unit (moving expenses, mailing fees). However, during the hearing, she amended her application to focus on her loss of quiet enjoyment.

Loss of Quiet Enjoyment

The Tenant stated that she is looking for compensation for a loss of quiet enjoyment because there were ongoing issues with mice. The Tenant stated that shortly after she moved in, she went for a trip, and when she returned in December of 2016, she notice hundreds of mice droppings all over the kitchen. The Tenant stated that she never left any food out and stores her food in jars. The Tenant stated that she notified the building manager at this time, and he gave her mouse traps. The Tenant stated that she caught 7 mice within 2 days in December of 2016.

The Tenant stated that two weeks later, a pest control company was brought in but this did very little to solve the issue. The Tenant stated that she continued to see mouse droppings all over her counters, her bedroom, and her living area. The Tenant stated that she had to clean and disinfect the kitchen counters, her bed area, and the shelves on a daily basis because of the droppings left by the mice. The Tenant stated that she would also see the mice running around, and she found it very unsettling. The Tenant stated that she continued to ask the Landlord to help her with the mice, and although some traps were set, it was not helping, as there were fresh droppings each day and multiple sightings per week.

The Tenant stated that she bought her own poison to try to help the situation but nothing would help. The Tenant also stated that she finally called the owner in October of 2017, and the Landlord stated he was going to come in and try to seal the unit off so no more mice could get in. The Tenant stated that the Landlord opened up the wall in the kitchen, and rendered the kitchen unusable for several weeks, while they filled holes, and put in spray foam to prevent mice from coming in. The Tenant stated that after the kitchen was patched up, she continued to see mice, and fresh droppings throughout October and November 2017. The Tenant stated that she moved out at the end of November 2017 because of the mice.

The Tenant stated that she was unable to have guests over, entertain, and she lost sleep on a regular basis because the mice were running alongside her bed. The Tenant stated that the persistent nature of the infestation made her have to leave. The Tenant provided photos of dead mice, droppings, and the holes in the walls, taken over several months.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Loss of Quiet Enjoyment

Section 28 of the *Act*, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the Landlord's right to enter the rental unit in accordance with section 29;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The bulk of the Tenants testimony was surrounding a loss of enjoyment from the mice infestation. In consideration of this, I turn to the following two Residential Tenancy Branch Policy Guidelines:

The Residential Tenancy Branch Policy Guideline #16 (Compensation for 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;***
- *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*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

The Residential Tenancy Branch Policy Guideline # 6
(Entitlement to Quiet Enjoyment)

A Landlord is obligated to ensure that the Tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

With respect to these issues, I find the following:

It is clear from the evidence before me that there were ongoing issues with mice in the rental unit, and in the building. The Tenant stated that these issues spanned from December 2016 until the end of her tenancy, in November 2017. The Tenant has provided photographic evidence and testimony to show the persistent nature of the issue. I note the Tenant took steps to involve the Landlord to remedy the issue, to keep her food items sealed off, and to monitor traps, and clean up droppings routinely for the duration of the tenancy. Based on the uncontested evidence and testimony presented to me, I find the Tenant has suffered a loss of quiet enjoyment from December 2016 until November 2017, as the issue with the mice created an unreasonable disturbance. Further, I am satisfied the Tenant took steps to involve the Landlord and to mitigate the issue. Although the Landlord took some steps to fix the issue, I am not satisfied the Landlord took sufficient steps to alleviate the rodent issue in a timely manner. As such, I find the Tenant is entitled to compensation in the amount of 10% of all rent paid during the period of December 1, 2016, until November 30, 2017.

I award monetary compensation on this issue as follows:

Date	Rent Paid at that time	Percentage awarded	Amount awarded
December 2016 – September 2017 (10 months)	\$1,550.00	10%	\$1,550.00
October and November 2017	\$1,600.00	10%	\$320.00
Total Accrued Balance			\$1,870.00

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since Tenant was largely successful for the majority of her claim. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make this application for dispute resolution.

In summary, and pursuant to section 67 of the Act, I grant the Tenant a monetary order for **\$1,970.00**, as specified above.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$1,970.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and 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: July 20, 2018

Residential Tenancy Branch