



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for loss as a result of a bed bug infestation;
- an order that the landlord repair the cupboards in the unit;
- to set limits on the landlord's right of entry into the unit; and
- to recover the filing fee for its application from the landlord, pursuant to section 72.

Issue to be Decided

Are the tenants entitled to a monetary award for loss arising out of this tenancy? Are they entitled to an order that the landlord do repairs and to be limited in their entry into the unit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The parties' testimony is as follows. It is undisputed that the tenancy began November 1, 2011, rent is \$980 a month and a security deposit of \$490 and a fob deposit of \$50 were paid. It is undisputed that the building is old, probably dating from the 1970s.

The tenants testified that contacted the landlord in July 2018 to complain of bed bugs but the landlord looked and said there was only one under the mattress. When they pointed out they were in the washroom also, the landlord required proof they were bedbugs and the tenant put one in a jar. The landlord then spread some powder. The tenant's daughter came to visit and handled the matter. On August 10, 2018, a K9 unit inspected and told them it was a horrible infestation and should be treated with heat or

steam but the landlord did not want to spend the money and accused the tenant of bringing in the bedbugs. The tenant suffered bites and stress and visited her doctor who confirmed she had bites from bed bugs. The tenant called the Residential Tenancy Branch and followed advice to give written notification of the issue to the landlord and a time limit to fix it. She went to the laundry room and found bed bugs and that other units were infected. Her representative said the landlord's boyfriend came over to the unit and was helping but he was on the side of the landlord. He said he heard the boyfriend tell the tenant to throw everything out because it would all get infested. She threw everything out as suggested. Her furniture was recently purchased at a cost of \$7500 approximately. They listed invoices on the telephone, \$1070 and \$900 for mattresses from a furniture store in November 2017 and March 2018, \$1900 in December 2017 for a 3 piece set from another furniture store and 2 cabinets in May 2016 for \$500 from a third store. They said the landlord hired a pest control company and there were 3 treatments starting August 16, 2018. They allege that unit 212 was heavily infested and if the landlord had acted promptly, the tenant would not have suffered for two months with bites. They said the tenant had lived there since 2011 and had no problem with bed bugs previously.

They also ask that the kitchen and bathroom cabinets be replaced. They are very old.

The landlords gave the following testimony. The person whom the tenants call the boyfriend of the landlord is actually the maintenance person. He denies that he ever told anyone to throw anything out. He said he told tenants he could not tell them what to do but he gave the tenant a preparation sheet from the pest control company detailing the preparations to be made for treatment. All tenants affected were given the same instructions. He said two other units had chosen to throw out some items. The treatments included spraying of all the furniture and some units threw nothing out. This tenant threw out furniture before treatment. The representative of the company said they received no written complaints from the tenant. Bugs don't destroy furniture and they should have waited to see results of the treatment. The manager said she used powder and spray on July 19, 2018 and then had subsequent treatment.

In evidence are letters dated August 30, 2018, September 13, 2018 and September 17, 2018 complaining of the bed bugs and saying they should not have to pay rent for these months due to the unhealthy living conditions and giving them 7 days to decide about a fourth treatment as the tenant is still suffering bites. They got a receipt for the fourth treatment on September 17, 2018 but they complained that it was the boyfriend who came and they had a verbal altercation with him. In evidence is a doctor's note stating

the tenant had bed bug bites and needed the infestation issue resolved. The landlord's letter in evidence notes the time line:

Aug. 10, 2018 –first made aware of problem; investigated and spread green earth on affected areas.

Aug.11 –called K9 inspector and they came on Aug. 13 and verified bed bugs.

Aug. 13 – Pest Control called; instructions for preparation given

Aug. 19 – Pest Control sprayed all infested apartments and doorways.

Aug. 29- second spray to certain units including tenant's

Sept. 17 – third spray to tenant's and another unit from which the infestation may have originated.

Researched other methods and found spray and powder treatment was just as effective. Invoices from Pest Control are included. A letter from a housing coordinator for a government organization is included. The coordinator thanks the landlord for prompt attention to a bed bug problem and said they did quarterly K9 checks and visual checks for the other 9 units they have in the building. On August 12, 2018, their client found 2 bed bugs and they had K9 unit come to inspect several apartments. They found one unit, 212, severely infected but they note the quick response from the landlord resulted in the final K9 inspection showing all their units being bed bug free.

The caretaker noted in writing that all repairs are done as needed, including a new stove, repairs to kitchen sink and toilet. He notes they always give 24 hours Notice of Entry unless it is an emergency.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Sections 7 and 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 provide sufficient evidence of the following four factors; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find the landlord has the obligation set out in section 32 of the Act to maintain the premises in a state that complies with the health, safety and housing standards required by law. This would require the landlord to treat any infestations or health hazards in a timely manner. I find the weight of the evidence is that the landlord met their obligations and treated the bed bug infestation using a pest control company until a K9 unit verified the units were pest free. Although the tenant alleges she notified the landlord in early July 2018, I find her first written notification is on August 30, 2018 and the landlord had already hired the pest control company that was treating the unit. I find the weight of the evidence is that the landlord diligently addressed the problem when they became aware of it and successfully treated all the affected units. I find the coordinator's evidence about other affected units supports the landlord's testimony. I find insufficient evidence that the landlord violated the Act or tenancy agreement by failing to treat the problem. I dismiss this portion of the tenant's application.

As I find the tenant's loss was not a result of the landlord's non compliance with the Act, I find the landlord is not responsible for loss of their furniture. I find it was their choice to throw it out. Section 7 of the Act provides that a claimant must mitigate the damage. I find the tenant could have mitigated the damage by waiting for the results of the final treatment, rather than discarding her furniture. I find the coordinator's letter did not note that any of the 9 units administered by them had to discard furniture and all were successfully treated. I dismiss this portion of the tenant's application.

In respect to their request for repairs, I find section 32 states that the landlord is required to maintain a unit 32(b) having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. While this building is over 40 years old, I find insufficient evidence that it is not maintained in a state to make it suitable for occupation. I note tenants often choose to reside in older buildings because the rent is less but the landlord has no obligation to replace cupboards if they are maintained. I find the weight of the evidence is that the landlord is maintaining the unit as he states he provides a regular maintenance person and has provided a list of repairs and a stove he replaced. I dismiss this portion of the tenant's application.

I find insufficient evidence that the landlord is entering without giving 24 hour Notice as required by section 29 of the Act. They deny this. However, I caution the landlord to observe the requirements of section 29 unless entry is required for emergency repairs which are set out in section 33 of the Act.

The tenants have not been successful in this application.

Conclusion

For the reasons stated above, the tenants' application is dismissed in its entirety without leave to reapply. I find they are not entitled to recover filing fees due to lack of success.

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: October 16, 2018

Residential Tenancy Branch