



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANIER HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

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 have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

The tenants advocate requested that the male tenant; DJ, be added to the decision as he was also a tenant along with GA and that it was simply an oversight by not adding his name. Counsel for the landlord objected to the addition but did not provide any grounds as to why. I find it appropriate and efficient to add DJ as he was a tenant during the tenancy and that the claim should be heard as such. The amendment was made pursuant to section 64(3)(c) of the Act.

Issue to be Decided

Are the tenants entitled to a monetary award as compensation for loss or damage arising out of this tenancy?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on November 1, 2015 and ended on January 31, 2017. The tenants were obligated to pay \$925.00 per month in rent. GA testified

that the unit was “infested with bedbugs”. GA testified that she was unable to sleep in her bedroom for ten months of her tenancy because of the infestation. JD testified that he has been so affected by the incident that he is unable to go out for fear of bringing bedbugs home. GA testified that she bought numerous bottles of Raid insect killer to control the bed bugs. GA testified that she wrote to complain about the bedbugs on July 5, 2016 and that the landlord had a pest control company attend to spray the unit but on only one occasion. GA testified that she had to launder her clothes more regularly than normal for fear of bedbugs in them. GA testified that they had to get rid of their futon and bed because of bedbugs.

The tenants advocate made the following submissions. ER submits that the landlord has a responsibility to maintain the property under section 32 of the Act which includes pest control. ER submits that the landlord failed to do that resulting in the tenants’ right to quiet enjoyment being breached under section 28 of the Act and therefore entitles the tenants to a monetary award under section 67 of the Act. ER submits that the landlord did not discharge their duty appropriately or in a timely manner. ER submits that the tenants lived through having bedbugs for ten months and that the landlords’ attempts to address it were lacking. ER submits that the tenants should be granted the monetary award as requested.

The tenants are applying for the following:

1.	Rent Rebate	\$6475.00
2.	Futon	75.00
3.	Bed	250.00
4.	Clothes	200.00
5.	Raid Insect Killer	44.90
6.	Hotel	414.00
7.	Washing clothes	70.00
	Total	\$7528.90

Counsel for the landlord made the following submissions. Counsel submits that the landlord had a long standing monthly contract with a pest control company that clearly shows that the landlord was pro-active about pest and insect control. Counsel submits that the tenants did not move out as a result of an infestation but rather as a result of being served a notice to end tenancy for unpaid rent of the last three months of their tenancy. Counsel submits that they have documentation that refutes the tenants claim that the unit was only sprayed on one occasion. Counsel submits that the landlord had the pest control attend on four separate occasions in July 2016 after receiving the tenants’ complaint letter. Counsel submits that the tenant did not make any further complaints about bedbugs until the landlord was served notice of this hearing; one year after the tenants moved out. Counsel submits that the tenants claim lacks merit and should be dismissed.

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.

It is worth noting that the tenant was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lack clarity or logic. The tenant presented her evidence in a very disjointed and vague fashion. In addition, the tenant would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The tenants' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Section 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. The tenants' position is that the landlord sprayed the unit only one time for bed bugs and did not return for a secondary spray as is usually done. The tenants submit that the issue was never resolved and that they are entitled to compensation as requested.

The landlord provided documentation that directly disputes this. The landlord provided evidence that they had a professional pest control company attend on July 11, 12, 22, 27, 2016 in response to the tenants' letter of complaint about bedbugs from July 5, 2016. In addition, the

landlord had a contract with the pest control company to do monthly inspections prior to, during and after this tenancy that shows that the landlord was pro-active in dealing with any pest or insects. The landlord testified that the unit did not have bed bugs prior or after the subject tenants. The landlord testified that the matter was resolved. AG testified that she complained every month from September 2016- January 2017, however the tenant was unable to provide sufficient supporting evidence. The landlord testified that he did not receive any further complaints from the tenants after the July 2016 treatments until he was served notice of this hearing in January 2018.

As noted above, a party making a claim must satisfy all four factors to be granted an amount under Section 67 of the Act. Based on the insufficient evidence before me of the actual costs to substantiate their claim, the lack of mitigation on the tenants' part, and the insufficient evidence that the landlords' actions were reckless or negligent, I hereby dismiss the tenants' application in its entirety. For absolute clarity, I find that the landlord addressed the matter in a timely and appropriate fashion in accordance with the Act.

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: September 04, 2018

Residential Tenancy Branch