Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWOOD RIDGE DEVELOPMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

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 landlord's agents attended on behalf of the landlords and are herein referred to as "the landlord". Tenant A.C. primarily spoke on behalf of the tenants, and is herein referred to as "the tenant".

As both parties were present, service of documents was confirmed. The tenant testified that he filed the application for dispute resolution on March 4, 2018 and personally delivered the notice of this dispute to the landlord's agent's office in early March 2018, although he was unsure of the exact date. The landlord confirmed receipt of the tenants' notice of dispute in early March 2018. Based on the undisputed testimonies of the parties, I find that the landlord was served with notice of the tenants' dispute in accordance with section 89 of the *Act*.

Preliminary Issue – Service of Documents

The tenant did not serve the landlord with any evidence until September 17, 2018, when the tenant personally served it to the landlord's agent. As the events related to this dispute occurred approximately a year prior to the tenant filing the application for dispute, I questioned the tenant as to why it took him over six months from the time he filed his application to serve evidence on the landlord, as this constituted an unreasonable delay and limited the landlord's ability to prepare a response to the tenant's claim. The tenant stated that he was busy and needed the time to prepare the submissions.

On September 19, 2017, the landlord served evidence on the tenants by registered mail, which was confirmed received by the tenants on September 25, 2018.

The tenant served the landlord with additional evidence, described by the tenant as "written submissions", by email at 9:54 p.m. on Thursday, September 27, 2018. I note that this was four days prior to this hearing scheduled for Tuesday, October 2, 2018. The landlord testified that he did not have an opportunity to review the over 200 pages of materials emailed to him by the tenant.

The Residential Tenancy Branch Rules of Procedure require that an applicant serve their evidence on the respondent with the Notice of Dispute Resolution Proceeding Package. For evidence not available at that time, the following applies:

> *3.14 Evidence not submitted at the time of Application for Dispute Resolution*
> *Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.*

Section 88 of the *Act* sets out the permissible methods for service of documents. Email is not provided as a permissible method.

First, I note that the tenant served the landlord with the September 27, 2018 materials by email, which is not a permissible method for service of documents.

Second, I note that the materials emailed by the tenant on September 27, 2018 were not new or unavailable at the time the tenants submitted their application for dispute, and that the tenant explained the delay was due to being busy and taking time to prepare the materials.

I find that the tenant failed to serve the September 27, 2018 materials to the landlord or the Residential Tenancy Branch dispute website 14 days prior to the hearing, and I find that the late service of the tenant's materials is not due to evidence being new or previously unavailable. Therefore, I have not considered the tenant's documentary submissions uploaded to the dispute website on September 27, 2018 as they were not submitted in accordance with the Rules of Procedure or the *Act*.

Preliminary Issue – Amendment of Tenants' Application

One of the tenants provided a different last name at the hearing than provided on the tenants' Application. The tenant noted that her last name was legally changed through marriage. Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenants' Application to provide the correct legal last name for tenant V.C.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as a result of the landlord's failure to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

At the outset of the hearing, the landlord presented a settlement offer to the tenant and the parties indicated a willingness to discuss the settlement offer. I explained to the parties that under section 63 of the *Act*, any settlement arrived at by the parties could be documented in a legal and binding settlement decision at this hearing. I further explained that in an arbitrated hearing, claims for compensation for damages are determined pursuant to section 67 of the *Act*, if a finding is made that the damage or loss is the result of the other party not complying with the *Act*, regulations or tenancy agreement. The tenant did not accept the settlement offer. At that point, the tenant requested to proceed with an arbitrated hearing.

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. This tenancy began on February 1, 2016 as a one-year fixed-term tenancy agreement. After one year, the fixed-term tenancy converted to a month-to-month tenancy. The monthly rent of $1,996.00 was payable on the first of the month. The tenancy ended on November 30, 2017.

The tenant testified that on March 6, 2016 he alerted the landlord to an issue with meal moths in the rental unit. These moths reportedly feed on grains and dried goods. The landlord responded to the tenant the next day, March 7, 2016 and arranged to have a pest control technician visit the rental unit on March 11, 2016 to assess the situation. As the tenant had reported killing eight moths in total, the pest control technician left two traps to monitor the situation.

On March 12, 2016, the tenant requested reimbursement from the landlord for the cost of food storage containers totalling $200.00 and for a rent reduction due to the inconvenience caused by the moths. The tenant testified that he had requested assistance from the landlord for intensive cleaning of the rental unit to remove any potential food sources of the moths. The refrigerator was built-in to the cabinetry and required trained technicians to remove without damage.

On March 14, 2016, the landlord offered the tenant a payment of $30.00 towards the cost of food storage containers and on March 16, 2016 also offered the tenant weekly cleaning service for two weeks. The tenant did not accept either offer of the landlord.

On March 17 and 18, 2016, the landlord followed up with the tenant regarding their offer of cleaning services, but it was not accepted.

On March 18, 2016, the tenant reported by email to the landlord that two more moths were killed or trapped. The landlord attempted to arrange a re-inspection of the rental unit by the pest control technician. On March 22, 2016 the tenant advised the landlord by email that he did not see any value in a re-inspection as he took issue with the pest control technician's report. On March 23, 2016, the tenant advised the landlord that he had hired his own pest control technician to re-inspect the rental unit, and requested that the landlord pay for the cost of the re-inspection. The same day, the landlord responded to advise that they would not pay for the re-inspection as the tenant had not given them notice or discussed this request in advance of arranging for the re-inspection. The landlord offered to have another pest control company re-inspect the rental unit and reiterated their offer of cleaning the unit, in particular hard to reach areas such as "behind dryer, under dishwasher, around fridge area, on top of cabinets".

On March 30, 2016, the rental unit was re-inspected by a pest control technician and some of the cleaning, in "hard to reach" areas, was completed. However, the refrigerator was unable to be moved as it required a skilled tradesperson, so cleaning behind the refrigerator did not take place on that day.

On April 4, 2016, the landlord requested access to the rental unit to determine the correct tradesperson needed to move the refrigerator, and to offer the tenant a chemical treatment option to address the moth issue. The tenant agreed to provide access to the landlord on April 7, 2016 to assess the refrigerator. The tenant declined the chemical treatment based on his research that it would not be effective.

It was mutually agreed to have tradespeople attend the rental unit on April 12, 2016 to move the refrigerator and have the kitchen thoroughly cleaned. The tenant arranged for and instructed the cleaners of what cleaning to undertake, the cost of which was reimbursed to the tenant by the landlord.

It was after this April 12, 2016 cleaning, that the tenant discovered the moths were nesting in the small pre-drilled shelving holes in the kitchen cabinets. Over the next couple of months, the landlord offered several sessions of cleaning services to vacuum and clean the holes with bleach until June 16, 2016 when the tenant testified that he killed the last moth.

From March 4 to June 16, 2016, the tenant reported that a total of 50 moths were killed in the rental unit.

The tenant submitted a Monetary Order Worksheet into evidence, outlining their claim as follows:

Item	**Amount Claimed**
Pest control company inspection	$78.75
Food storage containers	$293.85
Non-pecuniary damages	$6,737.50
Total	**= $7,110.10**

The tenants testified that the claim for non-pecuniary damages pertained to eating out as they felt the need to maintain a "heightened level of cleanliness" to avoid crumbs or food the moths could feed on; the use of their living room was impacted as it became a storage area for their kitchen supplies and food which they had removed from the kitchen cabinets; and the stress and annoyance of dealing with the moths.

The tenants submitted receipts for the cost of the pest control inspection and food containers. The tenants did not submit any receipts related to the non-pecuniary damages. The tenants submitted photographic evidence showing that their food was stored in containers on top of the kitchen countertops and on the living room floor. The tenants did not submit any evidence to quantify the degree to which the use of their living room was impacted.

The landlord disputed the tenants claims for non-pecuniary damages as the tenants did not submit any receipts for restaurants or other purchased meals. The landlord stated that they offered cleaning services to the tenants and reiterated this offer a number of times to the tenants, which the tenants refused to accept. The landlord explained that this was in an effort to alleviate the additional cleaning efforts claimed by the tenants. When I questioned the tenant as to why they had not accepted the landlord's offer for cleaning services, the tenant stated that he did not want to "destroy the evidence" and that he wanted specific cleaning under and behind the refrigerator, not just general cleaning.

The landlord's agent confirmed that although the landlord had offered the tenant partial reimbursement for the cost of food storage containers, the parties had not come to an agreement on the amount and therefore the tenants had not received any reimbursement to date.

Analysis

Section 64(2) of the *Act* requires that each decision or order must be made "on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part."

The tenants are seeking compensation for damages or loss which they claim has been caused by the landlord's failure to comply with sections 28(b) and 32(1) of the *Act*.

Section 28(b) of the *Act* provides that a tenant is entitled to quiet enjoyment, including the right to freedom from unreasonable disturbance.

Section 32(1) of the *Act* states that 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.

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, **if an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement.**

Section C of Residential Tenancy Policy Guideline #16. Compensation for Damage or Loss examines the issues of compensation in detail, and explains as follows:

> *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. In order to determine whether compensation is due, the arbitrator may determine whether:*
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> - *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
> - *loss or damage has resulted from this non-compliance;*
> - *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
> - *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

In this case, the tenant first notified the landlord of a concern about moths on March 6, 2016 and within five days, on March 11, 2016 the landlord arranged for a professional pest control technician to inspect the rental unit and set up traps. The landlord continued to work with the tenant to address the moth issue and offered extensive cleaning of the rental unit until the issue was finally resolved in June 2016.

I find that the landlord's response of hiring a professional pest control company to attend, investigate and set up traps to address the concerns brought forward by the tenants in relation to the moths within five days of being notified of the issue by the tenants, is a reasonable response within a reasonable amount of time.

The tenants took it upon themselves to pay for their own, independent pest control inspection, without providing an opportunity for the landlord to arrange for a second, independent inspection. Once the tenants brought their concerns about the reliability of the first pest control inspection to the attention of the landlord, the landlord did arrange for another pest control inspection to be done by another company.

The landlord made repeated offers for weekly cleaning services to the tenant to address their concerns regarding the heightened level of cleanliness the tenants felt was warranted under the circumstances, and for which they claim led them to incur costs for eating out and inhibited their ability to entertain friends and family at home. However, the tenants refused to accept these offers for weekly cleaning by the landlord. Eventually, they agreed to extensive cleaning services paid for by the landlord. Further to this, the tenants did not submit any evidence, such as restaurant receipts, to quantify their reported damages.

The tenants purchased food storage containers before giving the landlord an opportunity to purchase these containers on behalf of the tenants. The landlord originally offered to pay the tenants $30.00 towards the purchase of the containers, however the tenants refused to accept this offer as they wanted full payment for the cost of the containers.

From the testimony and evidence presented by the tenant, I accept that placing food into air-tight containers was part of the treatment plan to end the moth life-cycle. Therefore, I find that the landlord was responsible for either providing the tenants with food storage containers or reimbursing the tenants for the cost of the food storage containers, in the same way that the landlord would have been responsible for the cost of any chemical treatments required to address the moth issue. The tenant explained the necessity of purchasing air-tight containers, and the need for the containers to be large enough to accommodate his large bulk dried goods, and the tenant provided receipts as proof of the cost of the containers. Therefore, I find that the tenant provided sufficient evidence of the need for the size of the containers purchased and of the cost of the containers, and as such I find the tenants entitled to a monetary award of $293.85 for this expense as it was part of the recommended treatment plan by the pest control technician.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I do not find that the landlord failed to comply with the *Act*, regulations or tenancy agreement as the landlord responded in a reasonable way and within a reasonable amount of time to affect a treatment plan once notified of the moth issue by the tenants. The landlord made continued efforts to address the tenants concerns regarding cleaning and assumed the costs for this cleaning.

As I have not found that the landlord failed to comply with the *Act*, regulations or tenancy agreement, I do not find that the non-pecuniary damages and the cost of the pest control inspection claimed by the tenants are a result of the landlord's failure to comply with the *Act*,

regulations or tenancy agreement. As such, the tenants' claim for compensation related to these items is dismissed without leave to reapply.

Having been partially successful in this application, I find that the tenants are entitled to recover a partial amount of the filing fee paid for this application, in the amount of $50.00.

In summary, I award the tenants a Monetary Order in the amount of $343.85 for the cost of the food storage containers and the partial recovery of the filing fee.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of $343.85 pursuant to sections 67 and 72 of the *Act*.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: October 17, 2018

Residential Tenancy Branch