



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDCT, FFT

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's Portfolio Manager, Acting Regional Operations Manager, pest control manager, the tenants and the tenants' witnesses attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The Portfolio Manager (the landlord) and Tenant D.T. (the tenant) indicated that they would be the primary speakers during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was left with an agent of the landlord on August 22, 2018. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application.

The landlord acknowledged receipt of two evidentiary packages which were left with an agent of the landlord on September 12, 2018, and September 24, 2018. In accordance with section 88 of the *Act*, I find that the landlord was duly served with these documents.

The landlord testified that they personally served an evidentiary package to the tenant by posting it to the door of the rental unit on October 04, 2018. The tenant confirmed that they received this evidentiary package on October 04, 2018.

Although not served in accordance with the Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, which requires service of respondent's evidence at least seven days before the hearing, the tenant stated that they had seen all the documents previously and were familiar with the contents. In consideration of the tenant's testimony and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidence and I will consider it.

Preliminary Matter

The tenant had two additional witnesses available to testify but indicated that they would all provide the same testimony. I advised the tenant that I would only need to hear one witness provide testimony and that I would give it the appropriate weight in consideration of the witnesses prepared to speak to the same issue. The witness was instructed to leave the room until their testimony was required.

Issue(s) to be Decided

Are the tenants entitled to an order for the landlord to make emergency repairs to the rental unit?

Are the tenants entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided that this tenancy began on July 01, 2017, with a monthly rent contribution of \$856.00, due on the first day of each month. The landlord and the tenants agreed that no security deposit was paid for this tenancy.

The tenants provided in evidence:

- A copy of a 'Notice to Entry - Tenant Preparation Sheet' dated August 17, 2018, stating that the unit will be receiving treatment for bedbugs by the landlord and requiring the tenants to vacate the unit for a period of time;
- A copy of a notice of entry dated August 17, 2018, for entry to the rental unit on August 27, 2018, for the purpose of pest control inspection and that no preparation is required;

- A copy of a notice of entry dated September 11, 2018, for entry the following day for the purpose of pest control treatment;
- A copy of a notice of entry dated September 14, 2018, for entry to the rental unit on September 24, 2018, for the purpose of pest control inspection;
- A copy of a signed letter dated September 12, 2018, in which the neighbouring tenant states that they also have had an issue with a bug infestation for over two years;
- A copy of a tenant preparation sheet dated September 14, 2018, which gives instructions for the tenants before and after the treatment. The preparation sheet indicates that pets and people are not required to vacate the rental unit;
- A copy of a signed letter dated August 30, 2018, in which a caregiver for the children of one of the tenants indicates that they have incurred extra expenses due the children being in their care and requesting a total of \$1,200.00 to cover these extra expenses from June 2018 to September 2018;
- A copy of a receipt dated August 29, 2018, for renting a moving truck;
- A copy of a receipt and an invoice from a computer store dated September 04, 2018, in the amount of \$67.20 which shows as transaction approved. There is a copy of another receipt in the amount of \$218.00 which shows as transaction not completed;
- A copy of a receipt for garbage and mattress disposal dated September 20, 2018;
- A copy of a receipt for a storage unit dated September 20, 2018 in the amount of \$301.71;
- A copy of a letter from the tenant to the landlord detailing their total claimed expenses in the amount of \$4,220.64 comprising of child care costs, replacement of bed frames, repairs done on laptop in the amount of \$285.00, the cost of a storage unit and the cost of a moving truck; and
- A copy of a page from past correspondence, from the tenant to the landlord, detailing various rent reductions and compensation that the tenant is seeking from the landlord based on work done for preparation of treatments and expenses for moving to a more expensive rental unit.
- A copy of a page from another item of past correspondence from the tenant to the landlord detailing various compensations requested from the landlord for anticipated costs regarding the replacement and repair of the tenants' various possessions. At the top of this letter the tenants state that they had advised the landlord that their rental unit would not be ready for treatment on the scheduled date of August 17, 2018, and that a new date of August 27, 2018, was re-scheduled.

The landlord provided in evidence:

- A copy of a service receipt for a pest control company for cockroach treatment in April 2018;
- A copy of a service receipt for a pest control company for cockroach treatment in May 2018;
- A copy of a Bedbug Treatment Report for the rental unit dated July 17, 2018, which indicates medium infestation and recommends encasements for mattresses and box springs;
- A copy of a Bedbug Treatment Report for the rental unit dated August 01, 2018, which indicates low infestation and again recommends encasements for mattresses and box springs;
- A copy of a pest control company service receipt for bedbug treatment in August 2018;
- A copy of a pest control company service receipt for bedbug dusting in September 2018;
- A copy of an e-mail exchange between the three agents of the landlord in attendance at the hearing and another party indicating that on August 27, 2018, the rental unit was found to be low level activity in three out of four bedrooms but that Tenant D.T. had moved furniture from the infested room into the other rooms to allow more space. The landlord's agent stated that she advised Tenant D.T. that it was not a good idea as it could lead to infesting the other rooms. The landlord's agent also stated that they advised that open food sources for the cockroaches in the rental unit, such as bowls of food for the tenants' pets, will continue to attract cockroaches;
- A copy of an e-mail exchange between the three agents of the landlord in attendance at the hearing and another party indicating that on September 24, 2018, the unit was found to be in great shape with no infestation visible and that Tenant D.T. had disposed of a mattress and box springs, which was not at the recommendation of the landlord. It was noted that the cat food was outside;
- A copy of an e-mail exchange between the three agents of the landlord in attendance at the hearing and another party indicating that on October 01, 2018, there was no evidence of any bed bugs in the rental unit and minimal evidence of cockroaches although it was noted that the food bowls for the pets were back inside the rental unit. The landlord's agent stated that Tenant D.T. indicated that there were still bedbugs but could not provide any pictures of them; and
- A copy of an e-mail from the pest control manager to the Portfolio Manager dated October 01, 2018, stating that they had confirmed on August 27, 2018, that there were bedbugs and cockroaches in the rental unit and the steps they had told the tenants to take to mitigate their damages including but not limited to eliminating

exposed pet food in the rental unit, which the pest control manager indicated the tenant was resistant to do.

The tenant testified that when they first moved into the rental unit it was newly renovated and they had no problems until after four months when they discovered cockroaches. The tenant stated that the landlord advised the tenant to catch a cockroach to prove that they had them in the rental unit and then the landlord had pest control treat the rental unit.

The tenant submitted that they discovered bedbugs in June 2018 and that they had to bathe their children and change them when bringing them to a caregiver during the day. The tenant stated that it became too difficult to continue this routine while there were bedbugs in the rental unit and that they eventually gave full time care of their children to the caregiver until the bedbug infestation was eliminated.

The tenant testified that they have had to throw out items such as bed frames and mattresses and that they would not have had bedbugs in their rental unit if the problem in the neighbouring unit was addressed. The tenant stated that the pest control manager was aware of the issue with the neighbouring unit. The tenant stated that caulking was recommended and completed between the rental units but that the tenant is not convinced that it has solved the problem. The tenant stated that there are still bedbugs in the walls, stove and fridge as well as nested in the caulking.

The tenant indicated that the landlord stated there were no bedbugs in the rental unit as of September 24, 2018, but that the tenants have found bedbugs after this date and had witnesses to provide testimony confirming this. The tenant stated that his sister, who is their co-tenant, had bedbugs crawling all over their feet one morning after September 24, 2018. The tenant called one of the witnesses to provide testimony confirming that there was still an issue with the bug infestation.

The witness testified that the issue with the bug infestations have been occurring for a long time in the tenants' rental unit. The witness stated that they saw cockroaches and bedbugs at the tenants' rental unit when they were helping the tenant to pack items on September 25, 2018.

The landlord submitted that the tenants were never advised by them, or any pest control professionals, that it was necessary to throw out any furniture such as their mattresses or bed frames. The landlord noted that the invoice for the repair of the laptop has no indication that it is due to bedbug or cockroach infestations. The landlord testified,

regarding the receipt for the disposal of items, that the landlord has their own means for disposal of items that the tenants have access to if the landlord had been told of the tenants' need for it.

The pest control manager submitted that the bedbug infestation was not likely as a result of cross contamination from the neighboring unit as it would not take four months to appear in the rental unit if coming from there. The pest control manager stated that when they went to visit the tenant on August 27, 2018, they had already exhausted some steps taken by the landlord for similar situations and then had an outside pest control company attend the rental unit for bedbug treatment.

The pest control manager testified that some recommendations have not been followed by the tenants to mitigate the issues with the cockroaches. The pest control manager stated that they have bait for the cockroaches that they set in the rental unit to trap them but that the tenants have continued to have their open cat food in the rental unit, despite being advised not to, which is a food source for the cockroaches and makes it more difficult to eliminate the cockroaches with the bait and trap. The pest control manager referred to the landlord's correspondence regarding an inspection on October 01, 2018, in which no bedbugs were in the rental unit but that there was still cat food exposed in the rental unit.

The Acting Regional Manager (the manager) stated that when a tenant reports bedbugs or cockroaches, the landlord has their own contractors to try to deal with the infestations first. The manager stated that the pest control manager sets bait for the cockroaches, they have a process to steam and vacuum the rental unit and they give out items such as garbage bags to assist in preparations for treatment. The manager indicated that they also have laundry services available and that they only get rid of items when absolutely necessary. The manager stated that if the tenants had asked them to store some items while they were dealing with the infestation, the manager indicated that they would have been able to do that provided that the items were not contaminated. The manager submitted that they had a new rental unit for the tenants and were going to assist with moving costs in the amount of \$1,000.00 but that the tenants did not accept the offer from the landlord as they were expecting more compensation than \$1,000.00.

The tenant stated that they were refused garbage bags, the landlord never offered to store any items and that the moving costs were going to be at least \$1,600.00 based on a call that the tenant made to a moving company but admitted that they had not obtained an official quote.

Analysis

Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property **and for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems** or in prescribed circumstances, a rental unit or residential property.

I have reviewed the documentary evidence, including the affirmed testimony, and I find that none of the repairs requested by the tenants fit with the definition of what constitutes an emergency repair in accordance with section 33 of the *Act*.

For the above reason I dismiss the tenant's request for emergency repairs to be completed for the treatment of bedbug and cockroach infestations, without leave to reapply

Even if I had found that the tenant's request for repairs fit the definition of emergency repairs, based on the evidence provided by the tenant I find that there had already been multiple treatments for the infestations at the time that the tenants made their Application. I further find that the tenants had cancelled and re-scheduled their treatment from August 17, 2018, to August 27, 2018, as they were not ready, and the Application was made on August 22, 2018, while waiting for the re-scheduled treatment.

I find that there was no need for the tenants to make an Application for any repairs to be completed on August 22, 2018, as there was a treatment scheduled to be completed when their Application was made and the landlord was being responsive to the tenants' issues. I find that there is no evidence that the tenant was contacting the landlord for repairs which were not being completed. I further find that the tenants have not provided sufficient evidence that there continues to be an issue with the bedbug infestation which require additional treatments.

Although Tenant D.T., Tenant A.T. Witness R.C., in addition to two other witnesses state or are willing to state that they have seen bedbugs since September 24, 2018, I find it is unreasonable that the tenants would not be able to provide physical evidence of the bedbugs if this was true. Based on the above and a balance of probabilities, I accept the landlord's testimony that there are no more bedbugs in the rental unit as of October 01, 2018, the date of the most recent inspection.

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulations (the Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants are claiming \$4,220.00 for compensation for monetary loss or other money owed due to bed bug infestation and expenses for child care, storage, a moving truck, laptop repair and the replacement of other items.

I find that the tenant bears the burden to prove that the infestation of bed bugs in the rental unit is due to the actions or neglect of the landlord in violation of the Act, Regulations or tenancy agreement.

I have reviewed all documentary evidence and affirmed testimony. Although there is no dispute that the rental unit had become infested with bed bugs and cockroaches and that the tenants have incurred losses, I find that the tenants have not demonstrated that their losses due to the bed bug and cockroach infestation are due to the actions or neglect of the landlord in violation of the Act, regulations or tenancy agreement.

I find that the tenants have not demonstrated that the landlord is responsible for the infestations. If it is the tenant's position that the bedbugs and cockroaches are coming from the neighbouring unit and that the landlord has not done enough to address the issue in that unit, I find that the tenants have only provided a witness statement from the neighbouring rental unit stating that they have had bug infestations over the last two years but they have not sufficiently proven that the landlord caused the infestation of the neighbouring unit through their actions or neglect. I further find that the tenants have not given any evidence or testimony regarding the steps the neighbouring unit has taken to mitigate their infestation, such as correspondence between the two parties, or evidence that the landlord has been neglectful in addressing the infestations in the neighbouring unit which has led to the infestation of the tenants' rental unit.

Regarding the bedbugs, I find that there is not sufficient evidence that the tenants' infestation is directly connected to the neighbouring unit as the bedbugs only appeared in June 2018 and I accept the pest control manager's expert testimony that if they came from the neighbouring rental unit, it would not have taken from July 01, 2017 to June 2018 for the bedbugs to cross contaminate as it would have happened much faster.

In regards to the cockroach infestation, regardless of where they are coming from, I find that the landlord has demonstrated that the tenants are not sufficiently mitigating their situation as they have been advised multiple times about open food sources in the rental unit, as indicated in the August 27, 2018, inspection notes for the rental unit provided by the pest control manager to the Portfolio Manager. I find that the inspections done by the landlord indicates that there was no cockroach activity when the pet food bowls were outside the rental unit on September 24, 2018, but as of October 01, 2018, there was a little evidence of cockroach activity which coincided with the pet food bowl being inside again.

I find that the tenants are not doing all they can to remove open food sources which lessen the effectiveness of the bait traps set by the landlord. I find that, in order for the tenants to have any claim for losses, they must also show that they are taking steps to mitigate or minimize the damages. In addition I find that the tenants have not demonstrated that they have actually suffered any losses directly associated with the cockroach infestation and, as above, I find that the landlord has been responsive to the issue and not neglectful as the landlord has provided evidence of multiple treatments performed since April 2018 in addition to ongoing inspections to address the issue.

Even if I had found that the landlord was responsible for the infestations in their actions or neglect, I find that the tenants claim for childcare expenses is based on an estimate of what the caregiver requires and not actual evidence of increased expenses on the part of the caregiver or evidence that the tenants have suffered a loss in paying the caregiver a higher amount based on the increased care. I further find that there is no evidence of a professional recommending that the children stay with the caregiver on a full time basis and that it was a necessary action due to the circumstances. I find that many of the expenses that the tenants are claiming for are anticipated losses or estimates of losses and the Act only allows for compensation related to losses that have actually occurred, not estimates or anticipated losses.

Even if I had found that the landlord was responsible for the infestations in their actions or neglect, I find that one of the receipts that the tenants are claiming for in the amount of \$218.00 shows as the transaction not completed meaning there is no evidence that

the tenants actually paid that amount that they are claiming for and which impacts the credibility of the tenants' claim. I further find that there is no indication on the receipts that the repairs are due to the bedbug or cockroach infestations as the landlord has indicated.

Even if I had found that the landlord was responsible for the infestations in their actions or neglect, I find that there is no evidence that the landlord or the pest control professionals advised the tenants that they needed to throw out various items of furniture due to the infestations. I find that the recommendations on the bedbug treatment reports are for encasements for the mattresses and box springs and not for their disposal. I further find that there is no evidence or testimony that it was recommended or necessary for the tenants to place items in storage and to incur that loss after the most recent bedbug treatment.

Further to the above, I accept the landlord's testimony that they could have assisted with storage and disposal of items if necessary. As stated above, in order for a party to claim for a loss, they must demonstrate that they are mitigating their loss and the damages being incurred. I find that none of the correspondence from the tenants to the landlord is concerned about what assistance the tenants require such as garbage bags or storage or disposal. I find that the correspondence is primarily concerned with extracting various amounts of compensation from the landlord due to the infestations, including covering rent for new rental units in addition to moving costs and other various anticipated expenses.

I find that it is the tenants' responsibility to demonstrate that they are working with the landlord and, if the landlord is not being responsive, it is possible that the tenants may have a claim. Based on the evidence provided by the tenants and the landlord, the landlord has been very responsive to the infestation and has taken multiple steps to assist in the eradication of the infestations as well as providing other supports to the tenants in terms of information to help them prevent or mitigate future infestations.

I find that the tenants cancelling the August 17, 2018, treatment, due to the tenants not being ready, is an example of the tenants' pattern of not minimizing or mitigating their losses or damages being incurred due to the infestations. If I had found the landlord responsible for the infestations through their neglect, I would have found that the tenants have not demonstrated that they have fulfilled their duty to mitigate the losses, under section 7 (2) of the *Act*, which would impact their monetary claim.

Based on the written evidence, affirmed testimony of the parties and a balance of probabilities, I find that the tenants have not proven that they have incurred a loss due to the actions or neglect of the landlord in violation of the Act, regulations or tenancy agreement. Therefore, I dismiss the tenant's claim for compensation for loss or other money owed under the *Act*, regulations or tenancy agreement, without leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee from the landlord, without leave to reapply.

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: October 12, 2018

Residential Tenancy Branch