



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: FFL MNDCL-S

Introduction

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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

JO and AS appeared behalf of the landlord ('landlord'), and were given full authority by the landlord to act as agents for this hearing. 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 tenants confirmed receipt of the landlord's application and evidence, which was served to the tenants by Registered Mail. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application and evidence. The tenants did not submit any written evidence for the hearing.

Issues(s) to be Decided

Is the landlord entitled to monetary compensation for losses?

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

Background and Evidence

This month-to-month tenancy began on May 1, 2015, with monthly rent set at \$2,647.00 when the tenants moved out. The landlord had collected a security deposit of \$1,288.50 from the tenants. The tenants moved out on November 30, 2017 after being served a 1 Month Notice to End Tenancy for cause on September 28, 2017. The effective date was

for October 31, 2017, but the landlords allowed the tenants to move out on November 30, 2017. At the end of the tenancy, the landlord retained \$258.00 of the tenants' security deposit with their consent, and the remaining portion was returned to them.

The landlord is seeking compensation in the amount of \$4,452.50 as follows:

Item	Amount
Loss of Rental Income	\$2,647.00
Cost of Pest Control	1,705.50
Filing Fee	100.00
Total Monetary Order Requested	\$4,452.50

The landlord testified in the hearing that due to tenants' failure to maintain the rental unit in a clean and hygienic condition, the rental unit was infested with cockroaches and bed bugs. The landlord testified that the unit was brand new when the tenants moved in in 2015, and they were the first tenants to occupy the rental unit. The landlord testified that no other units were affected, and that the level of infestation was very bad. The landlord testified that they had attempted to address the matter with the tenants by sending written warnings, but the problem continued. The landlord included the correspondence in their evidence.

The tenants do not dispute the fact there was a problem with bedbugs and cockroaches in their rental unit, but testified that they were cooperative in dealing with the infestation. The tenants testified that they had first discovered bedbugs in November 2016, and notified the landlord immediately. The tenants testified that they suffered a financial loss as they had to stay in a hotel, and paid for half of the cost of the pest control at the time. At the hearing the tenants agreed to compensate the landlord an additional \$1,000.00, but the landlord wished to proceed with their full claim. Despite these efforts, the bed bugs returned in the summer of 2017, as well as a cockroach infestation. The tenants testified that they had paid for professional cleaning of the rental unit, and have accommodated the pest control companies.

The landlord testified that they lost two months' of rental income as a result of the infestation, but are only claiming one month's lost rent. The landlord is also seeking reimbursement of the pest control and the filing fee for this application.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I should first acknowledge that I am sympathetic to the circumstances that befell all parties in this hearing. Based on the undisputed sworn testimony of both parties, I have no reason to question the extent of the bedbug and cockroach infestation. Unfortunately, bed bugs and cockroaches are a problem in many residential properties. Attaching responsibility for infestations of this type is exceedingly difficult. A monetary

award would be considered in the event that evidence is provided to demonstrate that the tenants have failed to take measures to respond to an infestation.

I have considered the written and oral submissions of both parties, and while the landlord had provided evidence to support that there was a severe bed bug and cockroach infestation, the landlord did not provide sufficient evidence to establish that the infestation stemmed solely from the tenants' actions. The tenants testified that they had notified the landlord of the bed bug problem immediately, and accommodated the multiple visits by the pest control company, as well as contributed finally towards the pest control costs. The tenants attempted to settle the matter by offering the landlords an additional \$1,000.00, which was not accepted by the landlords. Although I accept the landlord's testimony that the problem was so severe that they lost rental income due to the infestation, the landlord did not provide sufficient evidence, such as expert evidence or reports, to support that the tenants were solely responsible for this loss.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Although I am not satisfied that the tenants were solely responsible for the infestation, and the resulting losses claimed by the landlord due to the infestation, I am satisfied that the landlord had provided sufficient evidence to support that the tenants did not comply with section 32(2) of the *Act*, which states that "*a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access*".

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlord nominal damages of \$1,000.00 for the tenants' failure to comply with section 32(2) of the *Act*.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their monetary claim, I find that they are only entitled to half of the cost of the filing fee.

Conclusion

I issue a Monetary Order in the landlord's favour in the amount of \$1,050.00. The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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.

The remaining portion of the landlord's monetary application is dismissed 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 11, 2018

Residential Tenancy Branch