



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC ERP FFT MNDCT

### Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fees for this application from the landlord pursuant to section 72; and
- a monetary award for damages and loss 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 tenants were represented by counsel. The landlord was assisted by their family member.

While the landlord confirmed receipt of the tenants' application, amendment and evidence, the landlord said that the materials were not served in a manner consistent with the *Act*. As the landlord confirmed that the materials were received I find that in accordance with section 71 the tenants' materials were sufficiently served.

The tenant MB said that they were not served with the landlord's evidentiary materials. The landlord testified that they had served the tenant CE with the materials but had no address for service of the tenant MB. The tenant MB confirmed that they have received the landlord's evidentiary materials through the tenant CE. As the tenants confirmed they are in receipt of the landlord's evidence I find that in accordance with section 71 the evidence was sufficiently served.

The landlord said that they have uploaded some additional pieces of evidence on March 25, 2019, the day before the hearing and they have not served the either of the tenants or their counsel with these materials. As these materials were not served on the tenants in accordance with the Act or at all, pursuant to Rule of Procedure 3.17 I exclude the landlord's materials that were not provided to the tenants.

At the outset of the hearing the tenants gave evidence that this tenancy has ended and they withdrew the portions of their application requesting an order that the landlord comply and for emergency repairs to be made.

#### Preliminary Issue – Adjournment and Joining of Applications

At the outset of the hearing the tenants requested that the present hearing be adjourned and heard together with the landlord's application which is scheduled for a hearing in July 2019. The tenant said that they have only recently received the landlord's application and are not prepared to proceed with a hearing.

I have considered the tenant's request and the provisions of Rule of Procedure 2.10. Based on the submissions I find that the two applications pertain to the same residential address and involve the same parties. However, I find that the applications are distinct and different evidentiary materials would be considered for each application. Furthermore, I find that it would not be in the interests of fairness, efficiency or consistency to combine the matters and have them heard together in July 2019.

Therefore, I decline the tenants' request to adjourn the present application to be heard together with the landlords' application.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

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

#### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in December 2017. The monthly rent was \$1,800.00 payable on the first of each month. A security deposit of \$900.00 and pet damage deposit of \$900.00 were paid at the start of the tenancy and is still held by the landlord.

The tenancy ended on February 28, 2019. The tenants submit that from the outset of the tenancy through to the end the rental suite saw multiple pests which the landlord did not deal with effectively. The tenant says that during the first week they found cockroaches in the suite and reported the issue to the landlord. The parties say that despite multiple requests by the tenants the landlord did not contact professional exterminators and instead took inadequate steps such as offering to reimburse the tenants for the cost of bug traps and purchasing insecticide for the tenants to use. The tenants submitted into documentary evidence a photo collage of areas of the rental unit where they spotted cockroaches.

The landlord testified that they took appropriate steps in response to the tenants' complaints by purchasing insecticide for the tenants to use. The landlord said that calling professional exterminators is an extreme immediate response to the tenants' complaints and they did not feel it appropriate.

### Analysis

The onus to show on a balance of probabilities that there is an evidentiary basis for their claim rests with the applicant.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the tenants have provided insufficient evidence in support of their claim. I find that the tenants have not established that there were pests in the rental suite to such a volume or frequency that it was beyond what would reasonably expected. The tenants

testified that they experienced cockroaches but they have provided few photographs showing the encroachment. The photographs submitted show close ups of areas of the rental suite but do not demonstrate that there is an infestation of cockroaches as testified.

Even if I were to accept the tenants' evidence that there were cockroaches in the rental suite I find little evidence that the landlord did not take appropriate steps. The parties testified that the landlord provided insecticide for use in the rental suite. I find this to be a reasonable response to a report that insects were seen in the building. I find that it is unreasonable for the tenants to forego the use of traps or insecticide and simply demand that the landlord employ professional exterminators to attend the suite. I find that the landlord acted reasonably under the circumstances given the evidence provided. There is no duty on the landlord to take the course of action demanded by the tenants when less invasive options are available.

I find that the tenant has not provided sufficient evidence to show that there was damage or loss which resulted from the landlord's actions or negligence. The tenant's claim for a monetary award of \$4,900.00 is not supported in the evidence. I find that the tenants' subjective complaints about their living condition to be insufficient evidence that any real loss has been sustained. I find that the evidence does not support that there has been any breach by the landlord.

For these reasons I dismiss the tenants' claim without leave to reapply. As the tenant's claim was unsuccessful the tenant is not entitled to recover the filing fee for this application.

Conclusion

The tenants' 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: March 26, 2019

---

Residential Tenancy Branch