



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RP, RR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order for regular repairs, for a monetary claim of \$23,600.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for a rent reduction of \$3,600.00, and to recover the cost of their filing fee.

The Tenant and a Witness, A.B., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 50 minutes and was monitored throughout this time. The only person to call into the hearing was Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents in person on November 8, 2019. He also said that he reminded the Landlord of the hearing "about 15 times". I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses at the outset of the hearing and confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

During the course of the hearing, the Tenant said he intends to move out of the rental unit as soon as possible; therefore, he was no longer seeking an order for repairs or a rent reduction. The Tenant said, "I would just rather get my furniture replaced. I cannot believe it – they basically ruined everything that it took a lifetime to build up."

As a result, I dismiss the Tenant's Application for an order for repairs and a rent reduction, without leave to reapply. I heard evidence regarding the Tenant's Application for a monetary order for damage or compensation under the Act, as well as the claim for recovery of the \$100.00 Application filing fee.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application Filing Fee?

Background and Evidence

The Tenant said that the periodic tenancy began on December 31, 2018, with a monthly rent of \$800.00, due on the first day of each month. The Tenant said he paid the Landlord a security deposit of \$400.00, and a pet damage deposit of \$250.00.

The Tenant submitted eight video recordings of the rental unit, showing multiple examples of bug infestations in the floors, the walls, the furniture, and the front door. The Tenant said that the Landlord has had an exterminator address the problem, but unsuccessfully. The Tenant said someone from pest control came:

...one time in the last two and a half months, maybe three months ago, and they never came for a follow up or anything. They basically walked around with a [bug spray] can. We had cockroaches at that point, and they came in and they spread bed bugs everywhere. I can never even sleep with my shirt off or I'll wake up with five or ten or 20 bites all over my body.

I basically started noticing the bugs when we moved in. They were hidden under

the mat. There wasn't a lot of stuff in the unit, so we were cleaning it and wiping it down and all of this.

The Tenant said that the Landlord had exterminators for other parts of the residential property at times, but they did not knock on his door for the treatment; therefore, he said, "The bugs are all running into my apartment." He added, "I threw out a Christmas tree, because there were cockroaches swarming it."

The Tenant said that he has had to throw out all of his belongings and that he wants to move, but he said he cannot take anything with him, because that will transfer the bug problem to the next place. He said his furniture was new at the beginning of the tenancy and he submitted a receipt for some of the pieces of furniture from a local furniture company. This receipt amounted to \$1,613.99 and is dated January 21, 2018.

The Tenant did not have receipts for the rest of his furniture that he purchased at another, national furniture company; however, he said he obtained the serial numbers for his pieces of furniture, took these to the furniture company to see if they still sold them, and if so, asked how much they cost now. These items were priced at a total of \$8,462.96.

The Tenant was unable to explain the basis of his claim for \$23,600.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Prior to the Tenant testifying, I explained how I would evaluate his evidence. I said that the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

As set out in Policy Guideline #16 ,“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 claiming compensation to provide evidence to establish that compensation is due.”

Landlords’ and tenants’ rights and obligations for repairs are set out in sections 32 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (1) 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.

(2) 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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In this situation, I find that section 32 of the Act effectively makes a landlord responsible for addressing the presence of pests or any resulting infestation. The undisputed evidence before me is that the building has a bug infestation that the Landlord has unsuccessfully attempted to address. The result for the Tenant is that he has to dispose of his belongings and incur the cost of replacing them before moving to another rental unit.

As a result of all the above, I find the Tenant has established on a balance of probabilities that the Landlord was negligent in not eliminating the cockroach infestation in the residential property and that the Tenant has suffered a loss as a result of this

violation of the Landlord's responsibilities under section 32 of the Act. I find this satisfies the first two steps of the Test.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and furniture for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a party needs repairs or compensation to a residential item, due to damage caused by the other party, the arbitrator may consider the age of the item in question at the time of replacement. The arbitrator also considers the useful life of the item when calculating the party's responsibility for the cost of the replacement.

In PG #40, the useful life of furniture is 10 years. The Tenant said that his furniture was new at the start of the tenancy in December 2018; however, the Tenant's receipt from a local furniture company for the sectional sofa was dated January 21, 2018. Therefore, I find that the furniture was approximately two years old at the time of the hearing and had eight years or 80% of its useful life left. Accordingly, I find that the Landlord is responsible for 80% of the cost of replacing the Tenant's furniture.

The Tenant's receipts added up to \$10,076.95, eighty percent of which is \$8,061.56. Based on the undisputed evidence before me, I award the Tenant with a monetary order for \$8,061.56 from the Landlord, pursuant to section 67 of the Act. Given the Tenant's success in the Application, I also award him recovery of the \$100.00 Application filing fee for a total monetary order of **\$10,176.95**, pursuant to sections 67 and 72 of the Act.

Conclusion

The Tenant is partially successful in his Application for an order for compensation for damage under the Act, regulation, or tenancy agreement. The Landlord failed to fulfill his duties under section 32 of the Act in terms of controlling a cockroach infestation in the residential property, including the rental unit, which damaged the Tenant's furnishings. The Tenant is awarded \$10,076.95 in compensation for this damage, and recovery of the \$100.00 Application filing fee for a total Monetary Order of **\$10,176.95** from the Landlord.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Tenant's other claims in his Application are dismissed without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 14, 2020

Residential Tenancy Branch