



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$1,420.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for an order for regular repairs.

The Landlord and an advocate for the Tenants, J.A. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. The Advocate said that the Tenant, P.L., was ill on the day of the hearing, and that the Tenant, K.H., was also unable to attend.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Advocate and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") ; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders

sent to the appropriate Party.

In the hearing, the Advocate provided the Tenants' forwarding address, which the Landlord had a chance to record. I told the Landlord that he has now been served with the Tenants' forwarding address, in terms of his responsibilities under section 38 of the Act, as of the date of the hearing, March 16, 2020.

The Parties agreed that the Tenants moved out of the rental unit on February 29, 2020; therefore, the Tenants' application for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for an order for regular repairs are no longer relevant. The Advocate said the Tenants withdraw those claims; however, the Advocate said the monetary claim for compensation for damage or loss under the Act still stands.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2013, with a monthly rent of \$780.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$490.00, and no pet damage deposit. The Parties agreed that the Landlord did not do a condition inspection of the rental unit prior to the tenancy starting nor at the end of the tenancy.

On the Notice of Dispute Resolution Proceeding ("Notice"), the Tenants claimed the following:

There is a mice infestation in our home, and it is very unsanitary. We can no longer cook due to the mice urine and feces on our stovetop and counters. They are living in the walls, ceiling and baseboard heaters. We are afraid to sleep, because we are terrified of mice. The stench in the home is intolerable and is causing us to have breathing problems. I have asked the Landlord (in writing) to get rid of the mice, but he says it is my responsibility.

In the hearing, the Advocate said that the Tenants seek recovery of a \$250.00 fee the Advocate said they paid to an exterminator in unsuccessfully attempting to resolve the

mouse problem. Further, the Tenants seek recovery of 30% of the rent from October 2019 to February 2020, or \$234.00 times five months for a total of \$1,170.00, for what they had to endure with the mouse infestation. The Tenants seek \$1,420.00 from the Landlord in all.

Exterminator Fee - \$250.00

The Advocate said that the Tenants called the Landlord on October 6, 2019, to tell him there was a mouse problem, and to ask for his help in resolving this problem. The Advocate said the Landlord ignored this request; therefore, she wrote him a letter dated November 26, 2019 ("Letter"), which the Tenants submitted as evidence in this proceeding. In the Letter, the Advocate noted that the Tenants had been dealing with a mouse infestation in the rental unit for the prior six weeks. She said the Tenant, P.L., had informed the Landlord about this problem on October 6, 2019, when she saw a mouse run across her living room and into her kitchen. I have reproduced the remainder of the Letter, as it parallels the Tenants' version of events that was conveyed to me in the hearing. The Advocate stated in the Letter:

On October 7, 2019, she noticed two mice, one was under the stovetop burner and the other was behind the TV by the electric baseboard heater. Again, she reported this to you immediately.

Your response to [the Tenant] telling you about this was that she was not to tell anyone, particularly the realtor and purchasers when viewing the home. You warned her that if she did not comply with this request that you would evict her.

Meanwhile, [the Tenant] continued to inform you about the mouse problem and that it was getting worse and you told her that she would have to hire and pay for an exterminator at her own expense.

About a month ago, [the Tenant] paid for an exterminator to come out to the house to lay some traps inside her unit. The exterminator also plugged up several small holes with steel wool so that the mice would be deterred from entering her unit. About a week later the exterminator returned to put more poison in the traps and said he would return a couple more times as part of his service agreement with [the Tenant]. The cost of this service was \$250.00.

Although the problem is diminishing somewhat, mice are still present in [the Tenants'] home and it is suspected that additional services will be required to

successfully combat the problem. As such, it will be your responsibility to ensure that the work is completed in a manner that complies with the health and safety standards required by law.

As a result of the strong odour of feces and urine that is in [the Tenant's] kitchen, she is currently experiencing breathing problems and is no longer able to cook, due to the mouse activity and stench that is in her stove/oven area.

I encourage you to refund [the Tenant] the \$250.00 that she has already paid for pest control services to date. Please feel free to arrange additional pest control services with [pest control company] to ensure that it is satisfactorily eradicated.

Your cooperation in this matter is greatly appreciated. Should you have any questions and/or concerns in regard to the above, please do not hesitate to contact me at [telephone number]

Regards,
[signature and printed name]
Tenancy Advocate

The Advocate attached a copy of the pest control invoice to the Letter. The Tenant submitted a photograph of a mouse caught on "sticky strip" that the Advocate said the Tenant purchased to help catch mice in the rental unit. A handwritten note on this photograph dates it: January 19, 2020.

The Landlord said in the hearing:

I'm not 100% sure if I paid her for the \$250.00 or not. If they say I did pay them, I might have.

When I put my house for sale, I got a text from, [P.L.], about a mouse problem. I said you can hire someone, I will pay you. She found the pest control place. He set up all the traps, when they gave me their phone number, I talked to pest control person. Told me everything that is happening. He told me, texted me, that he found mice activity due to food garbage, and to tell them to keep it clean.

The Landlord submitted a paragraph on a piece of paper that he said was a text from the pest control company, and which said:

Found mice activity in basement due to food stuff n garbage. Tell them keep clean and remove unnecessary stuff

[reproduced as written]

The Landlord submitted two photographs of garbage at the street side in front of the residential property. The photographs show eight garbage bags outside of the garbage bin at the side of the road, with what looks like debris scattered from an animal getting into the garbage bags. The words: "Feb-25-2020 GARBAGE DAY" were written on the bottom of the photographs. The Landlord submitted a number of other photographs, but they were not described or identified in the hearing.

Rent Reduction from October 2019 – February 2020 - \$1,170.00

In the hearing, the Advocate said that the Tenants moved out early and did not pay rent for February 2020, given the free month associated with the Landlord's issuance of a Two Month Notice to End Tenancy for Landlord Use of Property.

The Advocate said that although the Tenant did not pay rent for February, she still lived there and had to live with the mouse problem. The Advocate added:

Also, the exterminator clearly said the mice were in the walls. The other basement suite person also had mice, but he's a friend of the Landlord.

The Advocate said that the Exterminator clearly said it is not the Tenants' responsibility to pay for this. She said he suggested ways to minimize the infestation, like putting food into containers.

The Advocate said that the garbage outside was shared by all tenants in the residential property; therefore, the Tenants could not be held responsible for the mouse problem because of the garbage of all tenants.

Landlord said: "[The Tenant] left a mess. Both tenants were moving out on the same day and both used the garbage. Whose garbage is whose?"

The Advocate said that the Tenant received some value for having lived in the rental unit from October 2019 to February 2020; however, she said it affected every part of living there. Regardless, the Tenant is only claiming reimbursement for 30% of rent from October 2019 to February 2020.

The advocate said that the Landlord was notified about the mouse problem in October 2019, and she referred me to the email in her submissions dated November 3, 2019, from the Tenant to the Advocate. In this email the Tenant said: “Landlord had yelled at me and told me to shut my mouth.” The Advocate said the Tenant and her mother have severe intellectual impairment.

In the hearing, the Landlord said:

I’m not a lawyer, I’m a decent Canadian. I’ve never bullied anyone. I’ve never yelled at anyone. You can say anything you want. I don’t point a finger – it’s not fair. I agreed to pay her [exterminator] fees. She just wants to grab money from me. It’s not my responsibility to clean. People dump garbage. It took me three loads to the dump in my truck. I never said a bad word about her. I’ll go with whatever decision you make.

The Advocate said that she wrote a letter to the Landlord about the mouse infestation on November 26, 2019, and a follow up letter dated December 27, 2019. In the latter letter, the Advocate’s comments included:

It appears that very little has been done since you were informed of the worsening mouse problem. This leads me to believe that you are unwilling to comply with Residential Policy Guideline #1 that states that ‘rental units and property, or manufactured home site and parks, meet health, safety and housing standards established by law, and are reasonably suitable for occupation given the nature and location of the property.’

Should you fail to ensure that [the Tenant’s] unit is eradicated of the current mouse infestation, [the Tenant] will have no other choice but to file an application with the Residential Tenancy Branch for an expedited hearing for emergency repairs.

[emphasis in original]

In the hearing, the Landlord said that on March 8th, 2020, the Tenant asked to meet him so that he could return her security deposit to her, and reimburse her for the exterminator fees. The Landlord said he that he said “no” to returning the security deposit, but that he said, “here’s the money for the exterminator”, and gave her \$250.00 for that. He went on:

[P.L.] picked up her stuff, but left the door open. She was gone at 11, but the garbage was left behind, and a mess. The next-door neighbour said she moved

on the 29th. She said, 'I'll be back to clean on Thursday.' On March 8th, she asked for the security deposit and I said, look at the damage. If it costs, you have to pay for it. What about my pest control? **No, I didn't give any money then.**

[emphasis added]

Analysis

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

Before the Parties testified, I advised them of how I would be analyzing the evidence presented to me. I said that the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. I advised that RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenants must prove:

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

"Test"

Exterminator Fee - \$250.00

Landlords' and tenants' rights and obligations for repairs are set out in section 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.

Policy Guideline #1 ("PG #1") helps interpret this section of the Act:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet 'health, safety and housing standards' established by law, and are reasonably suitable for occupation given the nature and location of the property.

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

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.”

Further, section 62(3) of the Act states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Based on the evidence before me overall on this matter, I find that the mice infestation is a matter that fits within section 32(1) of the Act. I find that the Landlord is responsible for ensuring that the residential property complies with the health, safety and housing standards required by law, and therefore, that the Landlord was responsible for dealing this problem, himself, rather than delegating it to the Tenant, P.L., who had expressed her fear of the mice.

The Landlord focused on the amount of garbage that was at the curb on garbage day, February 25, 2020. However, the Parties agreed that the tenants in both units of the residential property moved out at the end of February 2020. I find it reasonable that there would be extra garbage left behind, due to the tenants’ moving out at that time. I find that this does not detract from the Tenants’ position on who is responsible for dealing with the mouse infestation.

The Landlord also focused on the exterminator’s advice to the Tenants to be sure to put food away in special containers. I find this is prudent advice for anyone, rather than an indication that the Tenant caused the mouse problem. With multiple people living in the residential property, and evidence before me that the mouse problem existed throughout the building, the Landlord has not provided sufficient evidence that it was the Tenants’ fault. Rather, I find that the Landlord did nothing to alleviate this problem in the residential property.

In his testimony, the Landlord acknowledged his responsibility by saying that he told the Tenant he would pay for the extermination. I find that the Landlord is responsible for reimbursing the Tenant for the \$250.00 extermination fee, and I award the Tenant **\$250.00** in this matter.

Rent Reduction from October 2019 – February 2020 - \$1,170.00

The Act and Policy Guidelines set out tenants' right to "quiet enjoyment" of the rental premises.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

...

(b) freedom from unreasonable disturbance;

...

Policy Guideline #6 ("PG #6") states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

[emphasis added]

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for

compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

[emphasis added]

Based on the evidence before me, overall, I find that the Tenants were deprived of their right to quiet enjoyment of the rental unit, due to the ongoing mouse infestation. I find that the Tenant, P.L., was afraid of mice, that the health of both Tenants was negatively affected by the presence of mice in the rental unit, and that their ability to use the kitchen was affected by the ongoing presence of the mice. I find that the Tenants downplayed the significance of this ongoing problem and minimized their losses by claiming only 30% of the rent back as compensation for this problem. I find that the Landlord took no steps to assist the Tenants in remedying this problem, for which he was responsible, according to sections 26 and 32 of the Act, and PGs #1 and #6. I, therefore, award the Tenants with 30% of their rent for the months of October 2019 through and including February 2020, in the amount of **\$1,170.00** from the Landlord pursuant to section 67 of the Act.

Conclusion

The Tenants are successful in their Application for recovery of the \$250.00 exterminator fee from the Landlord. The Tenants are also successful in their claim for reimbursement of 30% of their rent for the five months from October 2019 through to February 2020, in the amount of \$1,170.00. The Landlord breached his responsibilities under sections 28 and 32 of the Act and Policy Guidelines #1 and #6 in not doing anything to remedy the ongoing mouse infestation in the residential property. I award the Tenants with a monetary order of **\$1,420.00** from the Landlord.

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

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: April 1, 2020

Residential Tenancy Branch