



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MN

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to An Application for Dispute resolution (the “Amendment”) that were filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking:

- An order for the Landlord to complete repairs in relation to an insect/pest infestation; and
- Compensation for monetary loss of other money owed.

The hearing was originally convened by telephone conference call on February 24, 2020, at 9:30 A.M. and was attended by the Tenant L.B. (the “Tenant”), their Support Worker, and their Advocate as well as the Landlord P.K. (the “Landlord”). All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application or the Notice of Hearing.

The hearing was subsequently adjourned at the request of the parties, to allow them additional time to serve and receive evidence, and an interim decision was issued by me on February 24, 2020, wherein the parties were ordered to serve their documents on one another and to provide them to the Residential Tenancy Branch (the “Branch”) in advance of the reconvened hearing in accordance with the timelines set out in the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). The reconvened hearing was set before me on April 28, 2020, at 11:00 AM and a copy of the interim decision and notice of the reconvened hearing was sent to each party by the Branch. For the sake of brevity, I will not repeat here all of the details of the interim decision, and as a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on April 28, 2020, at 11:00 A.M., and was attended by the Tenant, their Support Worker, and their Advocate as well as the Landlord. All parties provided affirmed testimony and were given the opportunity

to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure as outlined in the preliminary matters section below; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Evidence

As stated above, the original hearing scheduled for February 24, 2020, was adjourned at the request of the parties in order to allow them additional time to serve and receive evidence in relation to the Application and Amendment. In the reconvened hearing the Tenant, their Advocate and their Support Worker stated that the Tenants' documentary evidence was sent to the Landlord by registered mail on March 30, 2020, and provided me with the registered mail tracking number. Tracking for the registered mail shows that the registered mail was received on March 31, 2020, and the Landlord confirmed receipt on that date during the hearing. As a result, I have accepted the Tenants' documentary evidence for consideration in this matter.

Although the Landlord stated at the original hearing that they wished to submit documentary evidence for my consideration, no documentary evidence was submitted for my consideration by the Landlord and in the reconvened hearing the Landlord acknowledged that no documentary evidence was served on the Tenants or provided to the Branch in relation to this hearing.

Amendment

In the reconvened hearing the Tenant, the Advocate and the Support Worker stated that the Amendment and supporting documentary evidence was sent to the Landlord by registered mail on March 30, 2020, and provided me with the registered mail tracking number. Tracking for the registered mail shows that the registered mail was received on March 31, 2020, and the Landlord confirmed receipt on that date during the hearing. As a result, I find that the Amendment was served on the Landlord on March 31, 2020, and

the Application is therefore amended in accordance with the *Act* and the Rules of Procedure to include a monetary claim for the cost of pest control services rendered.

Settlement

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to an order from the Branch for the Landlord to complete repairs to the rental unit?

Is the Tenant entitled to compensation for monetary loss or other money owed for the cost pest control services rendered?

Background and Evidence

The parties agreed that prior to that start of this tenancy on December 1, 2019, a pest issue existed in the rental unit and that there is currently a pest issue ongoing in the rental unit; however, they disagreed about the nature and cause of the previous pest issue and whether it was adequately resolved before the start of this tenancy, the nature and cause of the current pest issue in the rental unit, and the steps taken by the Landlord, if any, in relation to the current pest issue.

The Support Worker stated that they were also the Support Worker for the previous occupants of the rental unit prior to the start of this tenancy, and that those occupants vacated the rental unit as a result of cockroaches as they did not wish to proceed with dispute resolution through the Branch. Although the Landlord acknowledged that there was a pest issue during the previous tenancy, they stated that it was a result of a lack of cleanliness on the part of the previous occupants, not a larger issue, and that the issue was resolved after they vacated by leaving the rental unit vacant for one month and spraying it for pests. The Tenant and the Support Worker denied that the issue had been resolved and the Support Worker denied that the cockroaches were a result of the previous occupants’ behaviour or actions.

The Tenant and the Advocate stated that shortly after the Tenants moved into the rental unit, they began experiencing issues with pests, and that although they initially believed it was only bedbugs, they received confirmation on December 18, 2019, that there were German cockroaches in the rental unit. The Advocate stated that the Landlord was sent a letter on December 3, 2019, a copy of which is in the documentary evidence before me, advising them that there were bedbugs believed to have been left behind by the previous occupants, and requesting immediate fumigation of the apartment by the Landlord. The Advocate stated that the Landlord did not respond to the letter or take any action, and that on December 19, 2019, another letter was sent to the Landlord, a copy of which is also before me, advising them of the German cockroach infestation and the good neighbour municipal bylaw for the community requiring property owners to destroy hives, nests and colonies of pests, and requesting prompt resolution of the infestation by the Landlord.

The Advocate stated that again, there was no response to this letter or action taken by the Landlord in relation to the pests, and that after calling the corporate Landlords' head office on December 23, 2019, the Tenant's Application was subsequently filed with the Branch on December 24, 2019, seeking an order for the Landlord to deal with the pests in the rental unit. The Advocate and the Support Worker stated that the pests were a serious concern for the Tenants, as a young infant was also residing in the home, and that the ingestion or inhalation of German Cockroach shells is a serious health hazard. The Support Worker stated that although temporary accommodations were acquired for the infant and mother in December, ultimately, they were required to move back into the rental unit, and that pest control services were ultimately sought on behalf of the Tenant by the Support Worker for the health and safety of the child and the Tenants, given the Landlord's failure to act.

The Support Worker stated that a pest control company was hired by them on behalf of the Tenants on January 9, 2020, at a cost of \$656.25, to inspect and carry out pest control at the rental unit, and that the agency that they work for paid for these services as part of a funding program from a government agency as the Tenants did not have adequate funds to pay for it themselves. Although the Support Worker stated that there was no formal loan agreement, recipients are expected to repay amounts where possible, and as a result, the Tenants owe this money back to the organization. The Support Worker provided a copy of the pest control invoices for my review.

The Support Worker stated that despite the pest control paid for on behalf of the Tenant, cockroaches continue to be an issue in the rental unit and that although significant attempts to have been made by the Tenant, the Advocate and the Support

Worker to have the Landlord or their agents address the pest issue, the Landlord has not resolved the problem. The Tenant, the Advocate and the Support Worker stated that the Tenants are following all cleaning recommendations from the pest control company, do not keep the rental unit in an unhygienic state, and that the cockroaches are a known problem at the housing complex where the Tenants' rental unit is located according to the pest control company. The Advocate and Support Worker stated that the pest control company even advised them that they have reached out to the Landlord regarding the significant pest issue on the property, as the pest are likely in the walls of the buildings, requiring more significant remediation, but the Landlord never responded. As a result, they stated that the cockroach problem is not due to any actions or inactions on the part of the Tenants, the occupants, or their guests, and is therefore the Landlord's responsibility to resolve. The Tenant therefore sought an order requiring the Landlord to address the pest issue and compensation for the cost of pest control services already paid for by the Support Worker on their behalf.

The Landlord denied that the pest remediation efforts taken by them prior to the start of the tenancy failed and stated that the Tenants are the cause of the cockroach problem as they do not adequately clean the kitchen or the rental unit. The Landlord also denied that the pest control company has ever contacted them regarding a larger pest issue on the property. The Landlord stated that they have made numerous attempts to address the issue with the Tenant, but that the Tenant has either not been home or has refused them entry for the purpose of pest remediation. In the hearing the Tenant acknowledged refusing entry on January 10, 2020, as stated by the Landlord, but argued that they had received proper notice of entry from the Landlord or their agents and therefore nowhere to go. The Landlord stated that they have in no way been avoiding their obligations under the *Act* and that they have maintenance staff specifically to deal with repairs and these types of issues. As a result, the Landlord stated that they should not be responsible to pay for the Tenant's pest control services and that no order for repairs is required.

Analysis

Section 32 of the *Act* states that a landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. Residential Tenancy Policy Guideline (the "Policy Guideline") 1 also states that the landlord is generally responsible for major projects, such as insect control.

There was no disagreement between the parties that there is an ongoing pest issue in the rental unit, and as a result, I am satisfied that there are cockroaches and/or bedbugs in the rental unit. Although the Landlord argued that the bed bug and cockroach issues experienced by the previous occupants of the rental unit are unrelated to the current pest infestation in the rental unit, I find this extremely unlikely. The Tenant, the Support Worker and the Advocate have submitted documentary evidence showing that the Tenant experienced pest issues as early as three days after the start of the tenancy, and I find it extremely improbable as a result, that these two pest infestations are entirely unrelated. Further to this, the Landlord did not submit any documentary evidence or call any witnesses to support their testimony that pest control steps were taken between the two tenancies or that any such efforts were successful in fully resolving the pest issues. Although the Landlord also stated that the pests were the result of uncleanliness of the part of the Tenants, the Tenant and their Support Worker denied these allegations, and the Landlord did not submit any documentary evidence in support of their testimony that the rental unit is unclean. As a result, I find it more likely than not that the pest issues in the rental unit pre-dated this tenancy, that the Tenants are therefore not the cause of the pest issues, and that it is the Landlords responsibility under section 32 of the *Act* and pursuant to Policy Guideline 1, to resolve the pest infestation in the rental unit, or on the residential premises, as necessary.

Based on the above, I therefore make the following Orders:

- As soon as possible, and not later than May 31, 2020, the Landlord must hire a licensed pest control company in good standing in the community, at their own cost, for the purpose of inspecting the rental unit itself, and any adjoining walls/floors/ceilings, or areas of ingress into the rental unit (such as doors, windows, ducting, etc.), and common areas of the residential property as required, for the presence of pests, and to complete any necessary or recommended pest control actions to resolve the pest issue in the rental unit.
- The initial pest control inspection must be completed as soon as possible, and not later than May 31, 2020, unless emergency or other orders by the government or the Branch in relation to COVID-19 prevent such an inspection, and in that case, the inspection must be completed as soon as possible after the emergency or other orders preventing the inspection are lifted and not more than seven days later.
- The Landlord must provide the Tenant with proof that the initial inspection was completed as ordered, and documentation from the pest control company stating what areas were inspected, what the results of the inspection were, and what the recommended course of action is to fully remediate the infestation as soon as possible after the inspection is completed and not more than 48 hours later.

- If subsequent visits, inspections, or treatments are required by the pest control company, the Landlord must provide the Tenant with proof those inspections were completed as recommended, and documentation from the pest control company stating what areas were inspected or treated, what the results of the inspection or treatment were, and what the recommended next course of action is as soon as possible after the visit, inspection, or treatment is completed and not more than 48 hours later.
- The Landlord must comply with Part 2, section 8 of Ministerial Order No. M089, which can be found here: http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089, or through the Branch website, with regards to entry to the rental unit by themselves, their agents, or the pest control company, unless the parties mutually agree to the date and time of the entry.
- The Tenant must not unreasonably restrict, deny, or delay entry to the Landlord, their agents, or the pest control company if their entry is for the purpose of complying with these orders, or unreasonably prevent the Landlord from complying with these orders in a timely manner.
- Once the required pest control actions have been completed and the pest control company is satisfied that the pest issue in the rental unit has been fully resolved, the Landlord must provide the Tenant with documentation from the pest control company stating that the pest issue has been fully resolved as soon as possible and not less than 48 hours after the pest control company has made this determination.

I will now turn my mind to the Tenant's monetary claim. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I am satisfied based on the documentary evidence and testimony before me that the Tenant, the Tenant's Support Worker, and the Advocate made numerous attempts to notify the Landlord or their agents of the pest issues, and to have the Landlord resolve it, without success, over a period of more than one month, prior to January 9, 2020, the date upon which a pest control company was hired by the Support Worker on the Tenants' behalf. As stated above, I am also satisfied that the Tenants are not the cause of the pest issue.

Although I accept the Landlord's testimony that they or their agent(s) attempted to act in relation to the pest issue on January 10, 2020, and that entry for this purpose was refused by the Tenant, the Tenant stated that they did not receive proper notice of entry and the Landlord did not provide any proof that proper notice was given under the *Act*. As a result, I am satisfied that the Tenant was lawfully entitled to refuse this entry. Further to this, the Landlord's action was not undertaken until after the pest control company had already been hired on behalf of the Tenants, and more than one month after the Landlord was first notified of the pest issue. As a result, I find that the Landlord breached section 32 (1) (a) of the *Act* when they failed to act in relation to the pest issue in the Tenants' rental unit within a timely manner.

Although the pest control company was not directly paid for by the Tenants, I am satisfied that it was paid for by an authorised agent acting on behalf of the Tenants, as a result of the Landlord's breach of section 32 (1) (a) of the *Act* as outlined above, and that the Tenants have therefore suffered a financial loss in the amount of \$656.25 as a result. I am also satisfied that the amounts paid do not represent more than a reasonable cost for the services rendered and that the Tenants have mitigated their loss by first attempting on numerous occasions to have the Landlord resolve the issue, and providing the Landlord with a reasonable amount of time to do so, prior to hiring the pest control company. As a result, I find that the Tenants are entitled to compensation in the amount of \$656.25 from the Landlord, pursuant to section 7 of the *Act*.

The Tenants are entitled to withhold this amount from the next month's rent, or to recover it from the Landlord by way of the attached Monetary Order, but not both.

Conclusion

I grant the Tenants' Application and Amendment seeking an order for the Landlord to complete repairs in relation to insects/pest and for compensation for monetary loss or other money owed.

Pursuant to section 62 (3) of the *Act*, the parties are ordered to comply with the orders set out in this decision with regards to pest control.

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **\$656.25**. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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. In lieu of serving and enforcing this Order, the Tenants are entitled to withhold this amount from the next months rent, should they wish to do so.

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: May 21, 2020

Residential Tenancy Branch