Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

In this dispute, the landlord seeks loss of rent in the amount of $1,375.00 pursuant to 67 of the *Residential Tenancy Act* (the "Act"). The landlord also seeks recovery of the filing fee in the amount of $100.00 pursuant to section 72 of the Act.

The landlord applied for dispute resolution on May 12, 2020 and a dispute resolution hearing was first held on June 30, 2020, which was adjourned to July 27, 2020. At the hearing on July 27, two representatives of the landlord and all three tenants attended the hearing. The parties were given a full opportunity to be heard, to present testimony, make submissions, and to call witnesses. No issues of service were raised by the parties, and both confirmed that they exchanged evidence in compliance with the Act.

Issues

1. Is the landlord entitled to compensation in the amount of $1,375.00?
2. Is the landlord entitled to recovery of the filing fee in the amount of $100.00?

Background and Evidence

The tenancy started on April 1, 2020 and ended on April 30, 2020. Monthly rent was $1,375.00, due on the first day of the month, and the tenants paid a security deposit of $687.50. The tenancy was a fixed-term 12-month tenancy that was to end on March 31, 2021. A copy of the written tenancy agreement was submitted into evidence. The landlord currently holds the security deposit in trust pending the outcome of this dispute.

The landlord's representatives (hereafter the "landlord" for brevity) gave evidence that the tenants, due to issues that the tenants testified about, gave notice on April 24, 2020 that they would be ending the tenancy effective April 30, 2020.

Moreover, the landlord testified that because the notice to end tenancy was less than one month, that they were unable to find a new tenant for May 1, 2020 – despite putting up various advertisements and showing the rental unit. Thus, the landlord lost rent for May 2020 in the amount of $1,375.00. The landlord was able to secure a new tenant who moved into the rental unit on June 1, 2020. In addition to the lost rent, the landlord seeks compensation for the cost of the filing fee.

Cockroaches. This is the reason why the tenants ended the tenancy a mere month into the one-year tenancy, they testified. From the very first day of their tenancy, when they moved into the rental unit around 3 or 4 PM, they observed cockroaches. Not just a few, but a large number of cockroaches. They immediately contacted the landlord's building manager J. and informed her about the cockroaches. On April 2, the building manager let the tenants know that there would be a treatment scheduled for April 13.

As time progressed, the cockroaches returned, and in large numbers. "We were living in very difficult circumstances," the tenants testified. In fact, there were so many cockroaches that the tenants did not unpack their belongings and raised their beds in an effort to keep them from crawling up on the beds. The tenants asked the landlord if an earlier treatment date was available, but it was not.

On April 13, the day of the treatment, the tenants left the rental unit for six hours. They returned, but the cockroaches had returned as well, and it was "the same issue as before." There was, the tenant A.A. testified, "not much difference." Indeed, it reached a point where the cockroaches were climbing onto the tenants when they were eating meals. A second treatment was then arranged, which took place on April 21. That treatment occurred, and the tenants again left the rental unit for six hours. The tenants returned, but there "was the same number of cockroaches."

The tenants argued that the landlord is obligated to provide a rental unit that meets health and safety standards, and that in addition to the primary issue of simply having this many cockroach in the rental unit, the tenants were concerned about diseases that cockroaches carry. And so, after cooperating with the landlord and tolerating the large number of cockroaches, the tenants decided to end the tenancy. They were hesitant to do this in the middle of the height of the pandemic restrictions but felt that they had no

other choice given that “nothing was happening.” After the tenants vacated the rental unit, they had to dispose of all of their furniture as a result of the cockroach infestation.

In rebuttal, the landlord testified that their previous tenant – who had resided in the rental unit for one full year – had no issues with cockroaches. Regarding the booking of the treatment, the landlord booked it as soon as possible, but commented that it was very difficult to get any such trades into the building given the pandemic restrictions in place in April 2020.

The technician report indicated “light activity” at their last inspection but that the report indicated “medium activity” on the April 13 treatment. The landlord testified that the technician had noted the presence of “food debris” that would exacerbate the cockroach problem. At the second treatment on April 21, the technician’s report indicated “medium activity” and again referenced food debris and water damage.

The landlord concluded by arguing that “we did everything we could” and that the tenants were “not willing to work with us” in dealing with the issue. After the tenants vacated the rental unit, a follow-up inspection indicated that there was “minimum” activity in respect of the cockroaches. This, the landlord argued, strongly suggests that the tenants’ activities had a direct impact on the level of activity of the cockroaches.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

. . .

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this dispute, the landlord's application is based on the ground that the tenants breached their fixed-term tenancy and that the notice to end the tenancy was not in compliance with the Act. Section 45 of the Act outlines the manner in which a tenant may unilaterally end a tenancy, and it reads as follows:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

> (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
>
> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
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> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

First, as for the requirement that the notice comply with section 45(4) of the Act, the landlord stated that in respect of the form of the notice – which was sent by email – they considered it to be sufficient. As such, I will similarly find that the notice to end the tenancy conformed with section 45(4) of the Act.

As for the tenants giving notice under section 45(3) of the Act, the tenants argued that the landlord is obligated to provide a rental unit that, *inter alia,* meets health and safety standards. Section 32(1) of the Act states that

> 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.

According to the World Health Organization, and as is common knowledge, cockroaches are among the most common pests in many homes and other buildings. Some people may become allergic to cockroaches after frequent exposure. Cockroaches can sometimes play a role as carriers of intestinal diseases, such as diarrhoea, dysentery, typhoid fever and cholera.

While the tenants may have exacerbated the situation by leaving food debris, it is appropriate and to be expected that there will always be some level of food debris in a home occupied by people. However, and this is most notable, the tenants testified that there was a cockroach problem on their very first day of occupancy. This, I find, is evidence that the issue existed at, if not before, the tenancy began.

The tenants notified the landlord (by way of text and therefore in writing) of the issue on April 1, and the landlord was unable to correct the situation by April 13, and unable to correct the situation by April 21. I find that the landlord's breached a material term of the tenancy – that is, the requirement to provide a rental unit that complies with health and safety standards required by law – and that they were unable to correct the situation within a reasonable period after receiving written notice. (This is not to suggest that the landlord did not make efforts to resolving the issue; it certainly appears that they made the best efforts possible under the pandemic restrictions. However, at the end of the day, the responsibility to resolve such issues falls directly on the landlord.)

Thus, based on the oral testimony and documentary evidence, I find that the tenants gave notice to end the tenancy in compliance with section 45(3) of the Act and that they are not in breach of any other section of the Act. The tenancy, therefore, ended on April 30, 2020, and I conclude that the tenants are not liable for any lost rent after that date.

Given that the landlord has not established a breach of the Act by the tenants I need not consider the remaining three factors in a claim for compensation.

Conclusion

I dismiss the landlord's application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 27, 2020

Residential Tenancy Branch