



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ace Agencies
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RP, MNDCT, RR, FFT**

Introduction

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

- An order for repairs pursuant to section 33;
- A monetary award for damages and loss pursuant to section 67;
- Authorization to reduce rent for services or facilities not provided pursuant to section 65; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their application by hand delivery on August 18, 2020. The tenant provided a Proof of Service Form signed by the agent of the corporate landlord as evidence of service. Based on the evidence I find the landlord was duly served with the tenant's materials in accordance with section 89(1)(b) of the *Act*.

At the outset of the hearing the tenant testified that this tenancy has ended and withdrew the portions of their application pertaining to an ongoing tenancy.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to a retroactive reduction of rent?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This fixed-term tenancy began on November 1, 2019 and ended October 31, 2020. Monthly rent was \$2,800.00 payable on the first of each month. The rental unit is a detached home.

The tenant testified that in or about March, 2020 they noted there was an abundance of rats entering into the rental property. The tenant informed the landlord who arranged for a third-party pest control company to attend within the week. The tenant testified that while the pest infestation subsided for a time, the pests returned in greater force in June, 2020 and were present thereafter for the duration of the tenancy.

The tenant submitted into evidence photographs of the damage caused by the pests including their food and personal items being gnawed, feces littered about on countertops and holes in the walls of the building. The tenant testified that while they continued to reside in the rental unit throughout the course of the tenancy they were unable to store much foodstuffs or cook at home due to concerns about the pests. The tenant said that they informed the landlord who made some attempts to curtail the pest infestation but were unsuccessful.

Analysis

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.

Residential Tenancy Policy Guidelines 1 in relevant part states a landlord is responsible for pest control.

The tenant provided undisputed evidence as the landlord did not attend this hearing. I accept the undisputed evidence that there were pests in the rental property and that the issue was not resolved for the duration of the tenancy. I accept the evidence that the landlord did take some steps to address the issues but that these efforts were ultimately inadequate in eliminating the issue entirely.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. This section is read in conjunction with section 65 (1)(f) of the *Act* which allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the evidence of the tenant that the issue subsided for a time after the initial work was performed in April, 2020. I accept that the pest infestation grew to be a greater issue during the months following July, 2020 and continued until the tenancy ended on October 31, 2020.

The tenant has testified that they continued to reside in the rental unit for the duration of the tenancy. The pest infestation required curtailing some activities, limiting the use of certain cupboards and shelves that were accessible to rats. Evidence of the pests in the rental unit was visible through their feces, damage to the property and sounds of movement. The nature of the issue was such that the tenant was constantly aware of the presence of pests and limited some of their activities but not so severe that the rental unit was uninhabitable. The deficiencies were unavoidable in the tenant's daily life but were surmountable.

I find that an appropriate loss in the value of the tenancy resulting from the landlord's failure to address the pest issue in an adequate manner and provide reasonable protection from pests to be \$280.00, approximately 10% of the monthly rent.

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in the tenant's favour in the amount of \$1,400.00 {i.e., 5 months (June, 2020 to October 31, 2020) @ \$280.00 per month = \$1,400.00} to compensate the tenants for the loss in value of their tenancy stemming from the landlord's failure to perform reasonable repairs to deal with the pest infestation in the rental unit.

While the tenants also claim the cost of food stuffs they were unable to use and various cleaning supplies, I find there is insufficient documentary evidence of these items and consequently dismiss this portion of the claim.

As the tenants were successful in their application they are entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,500.00. 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.

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: November 9, 2020

Residential Tenancy Branch