Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Promontory Ridge Estates and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed;
- A rent reduction for repairs, services or facilities agreed upon but not provided; and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on December 17, 2020, at 9:30 AM and was attended by the Tenants and two agents for the Landlord (the Agents), all of whom provided affirmed testimony. The hearing was subsequently adjourned, and an interim decision was made on August 31, 2017, and the reconvened hearing was set for October 18, 2017, at 9:00 AM. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the Branch) by email on December 21, 2020, as requested by the parties at the hearing. For the sake of brevity, I will not repeat here all of the matters covered in 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 March 12, 2020, at 9:30 AM, and was again attended by both the Tenants and the Agents, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. As the Agents had previously acknowledged receipt of the documentary evidence before me from the Tenants, and the Tenants acknowledged now having acquired copies of the Landlord's documentary evidence previously found by me to have been sent to

them as required by the Act and the Rules of Procedure, I accepted all of the documentary evidence before me from the parties for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration by me in accordance with the Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative 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 confirmed in the hearing.

Issue(s) to be Decided

Are the Tenants entitled to compensation for monetary loss or other money owed?

Are the Tenants entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on October 23, 2019, states that the fixed-term tenancy commenced on November 1, 2019, and was set to end on February 28, 2020. The tenancy agreement states that rent was set at $900.00 per month, that 1 cat was permitted, that a security deposit of $450.00 was required and that no pet deposit was required or paid. It also states that a two page addendum forms part of the tenancy agreement.

At the hearing the parties agreed that the above noted terms were correct and that the Landlord still holds the $450.00 security deposit in trust.

Although the Tenants stated that the tenancy ended on October 1, 2020, the Agents disagreed, stating that the Tenant’s never gave notice to end their tenancy, and simply failed to pay October 2020, rent, resulting in the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on October 7, 2020. The Tenants did not deny receipt of the 10 Day Notice on October 7, 2020, and acknowledged that they neither disputed the 10 Day Notice nor paid the outstanding rent shown on it to the Landlord. However, the Tenants stated that upon receiving the

10 Day Notice, they called and advised the Landlord's agent(s) that they were immediately ending their tenancy. The Agents denied such a phone call, stating that they only found out that the Tenants had vacated the rental unit when they were notified by other occupants of the building that they had vacated, prompting the issuance of a 24 hour notice of entry and an inspection on October 22, 2020, to confirm that the Tenants had vacated already.

The parties were in agreement that the Tenants never returned the keys and that no move out condition inspection or report were completed. The Agents stated that after inspecting the rental unit on October 22, 2020, they had deemed the rental unit abandoned. The Tenants stated that they had vacated the rental unit on September 11, 2020, as the result of a bed bug infestation, and had not returned, except to gather their belongings from the rental unit at the end of September 2020.

The Tenants sought recovery of full 2020 September rent, in the amount if $900.00, as they stated that the Landlord breached section 32(1) of the Act by failing to provide a safe and clean rental unit to them, free from pests, and that there was not enough done by the Landlord to mitigate the bed bug infestation. Although one of the Tenants stated that they had a rash for a few weeks leading up to the bed bug sighting in the rental unit on September 11, 2020, they stated that they did not connect the rash to bed bugs until September 11, 2020. The Tenants stated that they immediately advised the Landlord of the bed bugs, and were advised that treatment of the rental unit had been scheduled for September 14, 2020. The Tenants state that they packed some belongings and prepped the rental unit as instructed, and although they sought authorization to stay at a hotel at the Landlord's expense, this request was denied. The Tenants stated that they went to a hotel anyways for one night, and then travelled several hours away stay with relatives, where they stayed until they returned to the rental unit to remove their possessions at the end of September 2020.

Although the Tenants wanted recovery of cost incurred by them for hotel stays, and the purchase of food, gas, and incidentals while out of the rental unit, they could not provide me with an exact amount sought for each of those claims at the hearing and did not submit a Monetary Order Worksheet as required, detailing the amounts of each claim. Instead, the Tenants submitted receipts for the purchase of some food, gas, incidentals, and one night's stay at a hotel on September 25, 2020, and asked me to review these receipts. The Tenants also wanted recovery of costs for one year of storage, as they stated they were told by the pest control company their only option was to store belongings for a year, and replacement of a fabric bed frame. No exact amounts were

given by the Tenants, either at the hearing, or in their documentary evidence, for the costs incurred by them for one year of storage or replacement of the fabric bed frame.

The Tenant stated that although a second spraying was scheduled for September 14, 2020, it was not completed until September 16, 2020. Although the Agents agreed that this was correct, here was a dispute between the parties about why the initial spraying was pushed by two days, with the Agents stating that it was because the Tenants had not prepped the unit properly and the Tenants stating that it was because the Landlord had not removed the baseboards and outlet covers as required by the pest control company. Although the Agents acknowledged that the baseboards and the outlet covers were not removed until September 15, 2020, they stated that it was because the Tenants had not moved their possessions far enough away from the walls and they needed to have this done first. The Tenants pointed to photographs in the documentary evidence before me which they stated they took after prepping the rental unit, stating that they prepped the rental unit to the best of their abilities and that they were told by the pest control company not to remove items from the rental unit and that several guitars would be fine, as long as they were in cases.

The Tenants stated that they could not remain in the rental unit until the first spraying as the situation was a “nightmare”, and they have a young child. The Tenants stated that they did what any reasonable person in the same situation would have done, which is vacate the rental unit and go somewhere safe. The Tenants references pictures of bed bug bites in support of their position that it was reasonable for them to leave immediately and for an extended period of time. The Tenants stated that they also could not return between sprayings as it was not safe for them to do so, as there was exposed wiring and no baseboards, which posed a safety hazard for their young child. The Tenants reference photographs of the rental unit showing removed baseboards and outlets with the covers removed. The Tenants stated that although the Landlord was aware they were not in the rental between sprayings, they were never advised that they needed to return and were later told by the pest control company that the first spraying may have been less effective as they did not return to the rental unit as “human bait”. Further to this, the Tenants stated that when they returned to the rental unit to collect their belongings at the end of September 2020, there were baby bed bugs all other their mattress, which is evidence that the spraying was ineffective.

The Agents stated that although they were aware that the Tenants were out of town between the sprayings, they stated that was their personal choice, as there was no requirement for them to be out of the rental unit either before the first spraying, or in the two week period between sprayings, except as set out in the prep sheet in the

documentary evidence before me. As a result, they stated that the Landlord should not be responsible for any hotel or incidental and food costs incurred by the Tenants while they voluntarily stayed out of the rental unit. The Agents stated that they were not aware of any requirement for the Tenants to return as “human bait” and that the Landlord cannot be responsible for what the pest control company said to the Tenants. With regards to the Tenants allegations that they found baby bedbugs in the rental unit at the end of September and therefore the pest control efforts were ineffective, the Agents stated that the rental unit could not have been sprayed for a send time any earlier than September 30, 2020, as there is a two week waiting period between sprayings and that on rare occasions, a third spray is sometimes required to fully resolve the issue.

The Tenants also stated that it was not reasonable for them to return to the rental unit between sprayings, as they would have to put everything back in place just to have to tear it all down again two weeks later. They also stated that their neighbours were sprayed for bed bugs 6 times and were compensated for food, hotels, and laundry, and therefore they too should receive this compensation. Although the Agents acknowledged that moving their belongings before and after spraying may have been inconvenient for the Tenants, they reiterated their position that it was the Tenants’ personal choice not to return to the rental unit, not a requirement by the Landlord or the pest control company, or a necessity as a matter of course for bed bug infestations. As a result, the Agents stated that the Landlord should not be responsible for the above notes costs for food, incidentals, hotels, storage, and replacement of a bed frame.

Despite the above, the Agents agreed that they do sometimes provide the above noted compensation to tenants, but reiterated their position that the Landlord is not legally obligated to do so. The Agents stated that they might have been inclined to work with the Tenants if they had approached them first, instead of incurring expenses without their knowledge or approval and then seeking reimbursement for them. Although the Tenants stated that they asked a different agent for the Landlord for recovery of some expenses in advance, the requests was denied. The Agents denied knowledge of any previous requests for compensation from the Tenants or a denial of any such request. Ultimately the Agents conceded that two nights hotel at $107.88 per night, which is what the Tenants paid and what the parties agreed was a reasonable rate in the area, would be acceptable, but only if I found that he Landlord was obligated to pay this amount to the Tenants.

In addition to recovery of $900.00 in rent paid for September 2020, and the gas, food, hotel, and incidental costs set out above, the Tenants also sought recovery of $326.03 in dry-cleaning costs. The Tenants stated that they were instructed by the pest control

company to wash and dry anything that could be laundered, but that they didn't feel comfortable doing this using the building laundry facilities, as it would have required them to take infested items through the building and use communal laundry facilities. Further to this, the Tenants stated that it was actually cheaper in terms of time and actual cost, as the building had pay laundry facilities, to have all their items dry-cleaned. Although the parties agreed that there were pay self-serve laundry machines on site, they disagreed about the cost to operate the machines with the Tenants stating that it was $2.75 per wash or dry, and the Agents stating that it was closer to $2.00 per wash and $2.50 per dry.

Although the Agents argued that the Landlord should not be responsible for any laundry costs incurred by the Tenants, as the Landlord did not cause the bed bug infestation and responded reasonably to it, they acknowledged that the infestation was not the Tenants fault and stated that they do sometimes pay some laundry costs incurred by Tenants impacted by bed bug infestations. However, the Agents stated that it is their opinion that it would have been cheaper for the Tenants to have done their laundry on-site, and as a result, the Tenants failed to mitigate their loss.

Finally the Tenants sought $8,000.00 in compensation for "pain and suffering", loss of use of their rental unit, and loss of quite enjoyment as they stated that they could not reside there, still have nightmares about the situation, and their young child cried daily as they had to be removed from daycare as they had nowhere else to stay in the area.

The Agents stated that the Landlord should not be responsible for the pain and suffering or loss of use and quiet enjoyment as the Landlord acted diligently to deal with the bed bug infestation and the vast majority of the costs incurred by the Tenants, as well as their "pain and suffering", were the result of their personal choice not to continue residing in the rental unit, not any requirement by the Landlord or the pest control company to stay away or any wrongdoing on the part of the Landlord. The Tenants disagreed, stating that in addition to the above noted reasons for not returning, they had to refrain from returning to the rental unit as they have a pet and one of the Tenant's has asthma.

The Tenants also sought recovery of their $100.00 filing fee.

Analysis

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. 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.

Policy Guideline #14 sets out a 4 part test for monetary claims for damage or loss, stipulating that to award monetary compensation, the arbitrator must be satisfied that a party to the tenancy agreement has failed to comply with the Act, regulation, or tenancy agreement, that loss or damage has resulted from the non-compliance with the Act, regulation, or tenancy agreement by the other party, that the party who suffered the damage or loss has proven the amount of or value of the damage or loss, and that the party who suffered the damage or loss has acted reasonably to minimize that damage or loss. Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As this is the Tenants' Application seeking compensation for damage or loss, I therefore find that the burden of proof falls to the Tenants to satisfy me, on a balance of probabilities, that the Landlord breached the Act, regulation, or tenancy agreement, that they suffered a loss as a result, the value of any such loss, and that they acted reasonably to mitigate any loss suffered.

The Tenants argued that the Landlord failed to comply with section 32(1) of the Act by failing to provide and maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant, due to a bedbug infestation. The Tenants argued that the Landlord's failure to act reasonably and diligently with regards to the bedbug infestation resulted in their loss of use and loss of quiet enjoyment of the rental unit, as they were unable to reside there after September 11, 2020. As a result, the Tenants sought recovery of the $900.00 in rent paid for September 2020. The Tenants also sought recovery of $326.03 in dry-cleaning costs, and costs for rental of a storage unit for one year and replacement of a fabric bed frame.

As stated above, section 32(1) of the Act states that landlords are required maintain residential premises in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Further to this, Policy Guideline #1 states that the landlord is generally responsible for major projects, such as insect control. As a result, and as the parties agreed at the hearing

that the Tenants were not responsible for the bedbug infestation, I am satisfied that the Landlord was required to deal with the bedbug infestation in the rental unit.

However, as set out below, I am not satisfied that the Landlord failed to act reasonably and diligently in doing so, as argued by the Tenants, or that any breach to section 32(1) of the Act occurred on the part of the Landlord that would give rise to a right for compensation on the part of the Tenants.

While the Tenants argued that the Landlord did not act reasonably and diligently to address the bedbug infestation, I disagree. At the hearing the parties all agreed that a first spraying of the rental unit was scheduled for September 14, 2020, only three days after the Tenants reported the bedbug infestation to the Landlord. Although there was agreement that the first spraying did not occur until September 16, 2020, and the parties blamed each other for the delay, I am satisfied that both parties were at fault, the Tenants for not fully complying with the preparation requirements and the Landlord for not having the baseboards and outlet covers removed in time. However, I find that a two day delay is very minimal, and as such, does not demonstrate to me that there was a lack of due diligence in dealing with the bed bug infestation by the Landlord.

Further to this, everyone agreed that the second spraying was properly scheduled for two weeks after the first spraying, which the parties all agreed was the minimum timeframe required between sprayings, and that the Landlord had provided the Tenants with mattress covers, at no cost to the Tenants, within a reasonable time. Finally, documentary evidence before me from the Landlord, in the form of a written timeline, indicates that despite having advised the Landlord on June 30, 2020, that there was a bedbug sighting in the rental unit, the Tenants declined to have the rental unit sprayed at that time, as they deemed it inconvenient and wished to wait to see if the infestation persisted or worsened. As the Tenants did not dispute this documentary evidence, I accept as fact that this occurred. Although this document also indicates that the rental unit was inspected on July 3, 2020, and no further evidence of bedbugs was found, I find that this pattern of events indicates that it was the Tenants, and not the Landlord, who were failing to act reasonably and diligently with regards to the bedbug infestation when it was first noticed or suspected.

Based on the above, I therefore dismiss the Tenants argument that the Landlord and/or their agents failed to act reasonably and diligently with regards to the bedbug infestation, therefore breaching section 32(1) of the Act. As I am not satisfied that the Landlord breached section 32(1) of the Act, I find that the Tenants have therefore failed to satisfy me that they are entitled to any of the monetary claims set out above,

pursuant to section 7 of the Act, and part one of the four part test for assessing monetary claims. Further to this, I find that the Tenants have failed to satisfy me of the value of their monetary claims for one year of storage and replacement of a bed frame, as proof of these costs was not before me, and that they mitigated their loss with regards to the cost of laundry, as the Landlord argued that the Tenants could have washed them at reduced cost themselves, and the Tenants failed to provide compelling evidence in support of their position that it was cheaper for them to dry-clean the items, such as proof of the cost of coin-operated laundry in the building and proof of the number of loads that would have been required at those costs. As a result, I dismiss the Tenants claims for reimbursement of September 2020 rent, dry-cleaning costs, storage fees, and replacement of a bed frame, without leave to reapply.

Having made this finding, I will now turn to the Tenants' arguments with regards to loss of use and loss of quiet enjoyment. Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*, and use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 states that 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. It also states that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment.

Although the Tenants argued that they were unreasonably disturbed by the bedbug infestation to such a degree that it constitutes a loss of use and loss of quiet enjoyment, and that they are therefore entitled to reimbursement of hotel, food, and incidental costs and $8,000.00 for pain and suffering, again, I do not agree. From the testimony of the parties and the documentary evidence before me I find that the Landlord and the pest control company required very little access to the rental unit for the purpose of dealing with the bedbug infestation, entering only to remove baseboards and outlet covers and to have the unit sprayed. While I acknowledge that the bedbug infestation, which was neither the fault of the Tenants nor the Landlord, and the entries to the rental unit for the purpose of resolving the infestation, were likely uncomfortable and inconvenient for the Tenants, I find that the discomfort and inconvenience was temporary in nature, and as a result, does not constitute a basis for a breach of the entitlement to quiet enjoyment on the part of the Tenants.

While the Tenants argued that they also suffered a loss of use of the rental unit, as they could not reside there after September 11, 2020, due to health and safety concerns, I disagree. The Tenants acknowledged during the hearing that they were permitted to return to and occupy the rental unit between sprayings, except for the duration of the spraying and the 6-8 hour period of time they were required to stay out of the rental unit by the pest control company after spraying, and stated that they did not return to the rental unit after September 11, 2020, as it was not convenient for them to unpack and re-arrange their belongings, only to have to re-pack and move them again for the second spraying a few weeks later. A text message chain from September 28, 2020, was submitted for my review and consideration wherein an agent for the Landlord inquired with the Tenants if the rental unit was prepped for the second spraying and one of the Tenants stated “We have been out of town. We can’t put the whole apartment back together for it to be destroyed in 2 weeks”. While I appreciate the temporary inconvenience caused by the need to prepare the rental unit for spraying, and then rearrange it for living thereafter, I find that one of the primary reasons that the Tenants did not return to the rental unit between sprayings, was that it was simply inconvenient for them to do so.

Although the Tenants stated that they also had safety concerns as the baseboards and the outlet covers had been removed as required by the pest control company for the spraying, and they have a young child, I am not satisfied that the outlet covers could not simply have been replaced between sprayings, either significantly reducing or entirely eliminating this concern. Although an email in the documentary evidence before me states that the baseboards needed to stay off until after the second spraying, there is no indication that the same applies to the outlet covers, and I am satisfied that the absence of baseboards is primary a cosmetic concern, not one of safety. Finally, although the Tenants stated that they also could not return to the rental unit because they had a cat, one of the Tenants has asthma, and the entire family was having nightmares about the situation, no evidence was submitted to demonstrate why the presence of a cat or having asthma would entirely have prevented them from returning. While I appreciate their fear and hesitancy with regards to bedbugs, I do not find that their fear of returning to the rental unit entailed them to reside elsewhere under the Act, at the Landlord’s expense, for an extended period of time.

Based on the above, I am satisfied on a balance of probabilities that the rental unit was habitable, except for the times during which the rental unit was being sprayed and the 6-8 hour period directly thereafter. I find that the Tenants arguments amount to reasons why they did not want to continue residing in the rental unit, such as their personal

feelings about bed bugs, and the inconvenience of having to rearrange the rental unit, rather than evidence to satisfy me that the rental unit was uninhabitable due to actions or inactions on the part of the Landlord or their agents. I also find that the Tenants have failed to satisfy me of how they arrived at their $8,000.00 valuation for their claim for "pain and suffering".

However, Policy Guideline #6 states that 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. Under these circumstances, I therefore find that the Tenants none the less suffered some loss of use of their rental unit, stemming from the bed bug infestation, and I find it reasonable under the circumstances to award the Tenants reimbursement of two nights hotel costs, at $107.88 per night, which the parties all agreed at the hearing was a reasonable nightly rate for the area, and $200.00 in food an other incidental expenses related to any need for the Tenants to be absent from the rental unit as a result of the bedbug infestation.

I dismiss the Tenant's $8,000.00 claim for pain and suffering and any remaining claims for gas, food, hotels, and other incidental costs, without leave to reapply.

As the Tenants were at least partially successful int heir Application, I grant them recovery of the $100.00 filing fee pursuant to section 72 of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of **$515.76** and I order the Landlord to pay this amount to the Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **$515.76** and I order the Landlord to pay this amount to the Tenants. The Tenants are provided with this Order in the above terms and should the Landlord fail to comply with this Order, this Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court, and enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the close of the proceedings, and I apologize for the delay, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated Monetary Order, nor my authority to render this decision and grant the associated Monetary Order, is

affected by the fact that this decision was rendered more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: May 18, 2021

Residential Tenancy Branch