



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, OLC, FFT

Introduction

The tenant applied for relief under sections 33, 62, 67, and 72 of the *Residential Tenancy Act* ("Act").

Both parties attended the hearing on May 14, 2021. No issues of service were raised by the parties, the parties were affirmed, and Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Issues

1. Is the tenant entitled to compensation as claimed?
2. Is the tenant entitled to an order for landlord compliance under section 62 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on October 1, 2012. Monthly rent is \$1,195.00 and the tenant paid a security deposit of \$597.50. A copy of a residential tenancy agreement is in evidence.

The tenant seeks \$5,000.00 for loss of quiet enjoyment, \$5,000.00 for "health affected," and \$4,484.00 for various property losses. In addition, the tenant seeks recovery of the application filing fee in the amount of \$100.00. Provided in their application are three Monetary Order Worksheets.

The tenant testified that in March 2020 they first noticed that the rental unit had a mice problem. According to the tenant, the landlord did nothing about this problem, though he did have a handyman come in and try to do some repairs to fix the problem.

But the mice problem persisted. They were coming through the fireplace and the situation was not fixed. The tenant testified that they were in constant communication with the landlord. The tenant testified that they had to deal with the mice infestation from March 2020 until about March 2021, when they “finally got a handle on getting rid of the mice.” However, over a period of about a year, the tenant had to clean up mice feces and urine on an almost-daily basis. They were catching mice regularly. What made the situation particularly bad is that the tenant has a fear of mice. Having to deal with them caused bouts of crying, anxiety, and an increase in blood pressure.

In November 2020 an exterminator (among a few who had) attended to the rental unit. He recommended that because mice appeared to be nesting in the tenant’s sofa, everything in the apartment where mice could nest (such as the couch and the recliner) should be removed. The tenant reluctantly got rid of this furniture, along with a lot of other property (such as a Christmas tree, albums, and a rug). During the hearing, the tenant went over the various amounts claimed. Submitted into evidence to support their claim were numerous photographs, receipts, copies of correspondence between the parties, a video, and an email physician’s note dated September 16, 2020.

The tenant argued that the landlord did not fulfill his obligations as a landlord. He apparently only attended to the rental unit on two occasions: (1) once to check out the problem for himself, and (2) to serve copies of documentary evidence on the tenant.

The tenant testified that they have recently purchased a house, and that they will be vacating the rental unit on May 31, 2021.

The landlord testified that they are a first-time landlord, having purchased the property about two years ago. The landlord said that they were “trying my very best.” When the tenant told the landlord about the mice problem, the very first thing the landlord did was (rather perplexingly, I must say) talk to their lawyer. The lawyer suggested that the landlord contact an exterminator or pest control, which the landlord did. The landlord hired three or four different exterminators. People were brought in to set traps and install mesh guards.

While the tenant blames the landlord for not doing anything, the landlord said that they hired people with the knowledge of how to deal with the mice problem. "That's all I could do," the landlord remarked, and that the landlord "[didn't] know what else to do."

Regarding some of the tenant's claims, the landlord pointed out that one piece of evidence suggests cleaning the furniture, while another piece of evidence suggest throwing it out. In respect of the large claim for compensation related to the tenant's health, the landlord argued that there is no proof or relation between the mice and the tenant's health. (The landlord noted that they, too, have health issues: the landlord's heart rate purportedly goes up whenever the landlord receives texts from the tenant.)

Both parties provide a brief rebuttal and the hearing ended at 11:46 AM.

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.

Claim 1: Order for Landlord Compliance

The tenant's application included a claim for an order under section 62 of the Act. Briefly, this section of the Act permits an arbitrator to order a landlord or a tenant to do something. It should be noted that the tenant's description under this relief referred to a request for punitive and aggravated damages. As this is not the basis for the issuing of an order under section 62 of the Act, I dismiss this specific aspect of the tenant's claim.

Claim 2: Reimbursement of Cost of Emergency Repairs

Section 33 of the Act, which deals with emergency repairs, and section 33(1) of the Act specifically, states as follows:

(1) In this section, "emergency repairs" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

In this dispute, the mice issues, and efforts to contain the problem, do not fall under any of the categories for emergency repairs. As such, I am unable to consider this claim and it is accordingly dismissed.

Claim 3: Remainder of Claim

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

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.

First, I very much acknowledge that there was a mice problem in the rental unit, and it is not lost on me that this has obviously caused the tenant a great deal of anxiety and other health issues. However, based on the evidence before me, including copies of correspondence from the landlord, supported by copies of receipts and invoices for various pest control companies, that the landlord did, in fact, discharge their legal obligation as a landlord.

Despite many attempts to eradicate the mice, the mice continued to be a problem. I am persuaded by the landlord's argument that they did everything they could have to deal with the issue. The landlord cannot be faulted for an issue that persisted despite their best efforts at finding a solution. Moreover, I find that the evidence supports the argument that the landlord acted reasonably promptly in dealing with the issue.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord did not breach the Act. Rather, the landlord acted with diligence but, through no fault or negligence of the landlord, the mice continued to infest the rental unit. Having found that the landlord did not breach the Act, I must further find that the landlord is similarly not liable for the tenant's claim that they are entitled to compensation for breach of quiet enjoyment (section 28 of the Act).

As the landlord is found not to have breached the Act, I need not consider any amounts claimed, as the entirety of those claims flow from the mice problem. Therefore, with respect, I must dismiss the tenant's claim without leave to reapply. The additional claim for the cost of the filing fee must also be dismissed.

Conclusion

The tenant's claim is dismissed, without leave to reapply.

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

Dated: May 17, 2021

Residential Tenancy Branch