



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Steadfast Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act of \$15,300.00.

The Tenant, C.L., an agent for the Landlord, V.T. ("Agent"), and an owner, L.P.T., ("Owner") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on November 15, 2020, with a monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and no pet damage deposit. The Parties agreed that the Landlord returned the Tenant's security deposit at the end of the tenancy.

The Tenant said that she moved out on February 20, 2021, although she said she had put most of her furniture into storage and retained the keys to the rental unit. The Tenant said that the tenancy ended:

...because of the issues that arose over the course of the tenancy - one thing after another. Silverfish, heat loss, power loss; you couldn't use the appliances on the same side of the unit at the same time. An electrician came at the end, but the owner didn't want that company. We were asked to not use the dryer and the stove at the same time.

We reviewed the first few issues in the hearing, and the Parties asked me to review their evidence for the remaining issues, rather than adjourning the hearing to present the additional issues and evidence. I have reviewed the issues, as follows.

I asked the Tenant to explain why she is claiming \$15,300.00 for these issues. She said:

It was basically to include the storage fees we had to pay - we were out that money. In an ideal world, we wouldn't have had to move our stuff to storage from the mould or silverfish.

I spoke with the RTB quite a few times and they said that we could basically claim for punitive damages, the way we were being portrayed by the rental company - I don't think it was handled in a fair or nice way. We were being

bullied into things in writing over email. See emails submitted – assumptions about our characters and everything we had to deal with.

Part of the punitive damages – we both had to miss work for a couple days on two separate times, because when you inhale mould, the symptoms are similar to Covid. I work at a clinic – I couldn't be around, if I had Covid symptoms. We had to miss work on two separate times - both of us. It was a stressful time for us to deal with.

#1 SILVERFISH

The Tenant said the following about the silverfish she said were in the rental unit:

The silverfish were first noticed in December 31. Actually, when I sent the first email at 8:11 a.m. that morning. We noticed silverfish and it became increasingly worse over a couple days. Me or my boyfriend had never experienced them before. I didn't know them - what they were - until I first saw them.

The Agent said that she was not aware of silverfish being in any other units. The Owner said: "No, we haven't had that situation before. We haven't used these treatments before."

I asked the Tenant how the silverfish affected her enjoyment of the rental unit. She said:

Well, over time it became increasingly worse. We would get up in the morning, go to get changed and silverfish in our underwear and sock drawer - in the dryer even. I opened up the dryer and it was alive in the dryer. It got to the point that I didn't want to take my shoes off. They were everywhere. My boyfriend's daughter is five and they were in her play pieces – dead silverfish in what she would play with.

February 21st is when I had sent the email about the potential leaks in the unit. I opened up his daughter's room and there were silverfish crawling up the wall by her head. We wanted to get everything out on the table and let them know. I didn't receive any response for four days. They ended up being everywhere. They were in our bed.

I asked the Agent for her reply to what the Tenant had said. The Agent said:

We received her email on February 21st and notified the owner. And we provided quotes for the treatment. But the owner said they have already treated the building, and if it persists, we will treat it again.

The Owner testified, as follows:

That would have been [L.], who would have responded. I didn't see it before or after the tenancy. We hadn't had any silverfish before or since they left. The apartment is empty. They're not there. I don't recall it being treated before or when they were in. It may very well have been, maybe [L.] had done it.

Early in March, when I cleaned, I never saw any evidence of silverfish in the apartment, itself. I'm not saying they weren't there, but I didn't see them before or after - even after I took the mattresses out. They may have been there, they may have died, but there is no evidence of them now.

The Tenant replied, as follows:

I just want to say that I just heard a comment about the owner cleaning out the suite in early March. We were in contact with the rental agency the whole entire time. The keys were returned toward the end of March - the keys and possession of the unit on the 27th. I let her know that the keys were at the apartment.

My Mom and I went over to the unit one night - silverfish are more evident at night. We found them everywhere. The baby silverfish were in the spare bedroom. As soon as the light was on, they were everywhere. I have video evidence of silverfish on the mattress and the box spring still alive, so I'm not sure how all of a sudden there would be no sign of them.

Also, per no one else in the building having silverfish, the tenant in Unit B said he had silverfish, but it wasn't anything that he minded handling. Not a lot on his side, but he had seen silverfish there, as well. Can't imagine that they would be in just our unit.

The Owner said:

She's right in that - it would have been the first part of March, I left it until [the Agent] said it was okay for me to go in. It would have been later in the month that I removed the things in the apartment.

The Tenant said:

I have in email on March 6 - there's an email [the Agent] sent to me stating that the owner had been in our unit. We still had stuff in the unit. We just took the stuff we had to go into a storage unit. There were still a couple things we had in there. There was a bed of garbage and we had no idea they were even going in there. They were there without our permission. The owner was in the unit when we went there.

Pay rent for March? No. We were waiting for a response from [the property managers] after I sent that original email. In the meantime, the silverfish were getting worse, and we decided to avoid further damage by getting a storage unit, until the unit was repaired to anybody's standards of living. They did finally give us a 10 Day Notice to vacate.

The Owner said:

We went in the first part of March, probably the 3rd, and we were informed by someone in the building that it appeared that the Tenants had moved out, and we went in just for safety reasons - no water left running. We can do that if we suspect the tenants aren't coming back. There were not a lot of things left. Some garbage bags and a couple of mattresses. We did go in, but it wasn't cleaned that day - just wanted to make sure that nothing was putting the building at risk.

The Agent said: "We do not find this amount they are claiming to be fair, it is quite a lot."

I reviewed the Tenant's photographs of the box spring, but I could not see the bugs to which the Tenant was pointing in the first few photographs. However, the silverfish were very clear in the fourth box spring photograph. I also saw photographic evidence of silverfish on a baseboard. Further, when I viewed a recording the Tenant submitted which zooms in on an insect, the insect moved, but it was difficult to see until it started moving. I find there may have been silverfish in the Tenant's box spring photographs that I did not see.

The Tenant submitted a letter from [L.O.], who she said was her former landlord. [L.O.] said the following in her letter:

I have been asked by [the Tenant] to provide a statement with respect to her tenancy while residing in a property she rented from me before moving to [town] in March of 2021.

Specifically, she asked me to speak to the issue of silverfish which she states were present at her new address. I understand there was an indication that she may have brought the silverfish with her from my property. This is not correct. I have never seen evidence of silverfish in the unit and there are none now.

I would presume if the silverfish were brought with her, I would have seen evidence of this, and there is none.

With respect to [the Tenant's] time as a tenant with me, I can attest that she was a pleasure to deal with and she kept basically to herself. I had no problems with her whatsoever and she was always respectful. In fact, I was sorry to hear that she was leaving but understand she was moving in with her boyfriend, whom I have also met on occasion and found him also to be equally respectful.

The Tenant also submitted a statement that she wrote, which included the following:

Our email evidence from [the Agent] states that the owner 'raided the areas in the suite.' We were never notified about our unit being entered by the owner to 'raid' the areas that the Silverfish seemed to be coming from. The remedy to address the silverfish issue as described above was absolutely not successful.

The Landlord submitted written statements, which included the following:

Silverfish infestation concerns – As per the walk-in inspection report there were no silverfish in the unit originally. The unit was freshly painted, as was stated by the tenant, and had no visible insect infestation. As per the owner's statement, none of other tenants in the building had experienced the silverfish issues. Unless the tenant provides the evidence that the mattress they have brought was just purchased as brand new (with dates and receipt), it is impossible to prove that the mattress brought in was not in fact infested with the silverfish already and caused these issues.

When the tenant first raised the silverfish concerns, we as the Rental Managers did provide the owner with 3 quotes for pest control, but the owner stated that they have already gone ahead and treated the building and that the insects

should go away. If the issue still persisted within a week or two, we could then revisit it and potentially use the professional services.

When I asked the Tenant for the value of the loss or damage based on the silverfish in the rental unit, she said the following:

A couple other things were on the original response; I had sent to them with all the amounts. I believe ... the security deposit was covered already. The storage fees which I don't remember exactly.

We also had in there basically from start of tenancy to when it ended – rent that was paid. We acknowledged that we don't expect to live anywhere for free, it was just mainly that the point about how it was handled by everybody. The unit was misrepresented. When we did the walk-in, it was freshly painted and considering the area, we were fine with it. I work a block away. We feel it was misrepresented given the mould issues at the end – it was just painted over, not dealt with. That was \$3,500.00.

\$300.00 for the storage, we estimated costs for the bed and box spring - \$1500.00 and additional aggravated damages for \$10,000.00. It was a stressful situation, and it was a point in everything. I don't want anyone after us to deal with the same.

The Agent said:

We have stated that this amount of \$15,300.00 is basically the rent they lived for from the end of November to the end of February. It is unfair to claim it back, because they have lived there for 3½ months. Estimate of replacement of a bed and box spring – what condition was it in at start? No receipts. We totally disagree with damages of \$10,000.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim.

In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

(“Test”)

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Policy Guideline #1 “Landlord & Tenant – Responsibility for Residential Premises” states the following:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain “reasonable health, cleanliness and sanitary standards” throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of

premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

#1 SILVERFISH

I find that the Tenant provided evidence that there were silverfish in the box spring that she used in the rental unit. The Owner said that there had never been silverfish in the residential property, and as such, that they had not done extermination treatments. In contrast, the Agent provided evidence that the other owner, [L.], said that they *did* do treatments. There is also evidence that the Landlord sprayed the rental unit with a bug spray treatment, themselves. I find the Landlord's evidence in this regard to be internally inconsistent, and therefore, I find that it lacks reliability.

The Owner's evidence of when he entered the rental unit near the end of the tenancy is also internally inconsistent. Initially, the Owner said he entered the unit in early March, but then it was later in the month, and finally, it was again early in the month for safety reasons, such as to ensure there was no running water. Again, I find these inconsistencies to affect the reliability of the Landlord's evidence. Accordingly, I have given the Landlord's evidence less weight.

The Tenant provided evidence that she did not have silverfish in her previous rental unit. Further, she provided evidence that she was unaware of any pest treatment that the Landlord had done.

When I consider the evidence before me overall in this regard, I find that the Tenant has provided sufficient evidence to prove the first two steps of the Test on a balance of probabilities. However, I find that the Tenant failed step three of the Test, in that she did not explain how she arrived at the amount she claims in this Application, and she did not indicate a value of each issue for how it affected her tenancy. In the hearing, the Tenant offered some figures for her claim, such as "\$3,500.00" for the mould, "\$300.00" for the storage, and estimated costs for the bed and box spring – "\$1,500.00", and additional punitive damages for \$10,000.00."

I find that this is not proof of the value(s) claimed, but suggestions of the cost the Tenant incurred, because of the Tenant's claim that the Landlord breached the Act or tenancy agreement in this matter. I find that the Tenant did not provide sufficient evidence to establish her claim regarding the value of the impact of the silverfish on this tenancy. I could not find a monetary order worksheet, nor receipts for any expenses incurred, and the Tenant did not point out such documents in the hearing.

However, PG #16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages **are rarely awarded** and must specifically be asked for in the application.

The Tenant repeatedly referred to her claim for \$10,000.00 as “punitive” damages, and not “aggravated” damages. “Punitive” damages are defined by the Oxford dictionary online as: “damages exceeding simple compensation and awarded to punish the defendant.” PG #16 continues:

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party’s non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and **must not include any punitive element.** A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence. .

[emphases added]

I find that the rental unit had a silverfish infestation. I find that the Landlord neglected to treat the silverfish in the rental unit while the Tenant lived there. I find this is a breach of their obligation under section 32 of the Act to maintain the rental unit in a state of

decoration and repair that complies with the health, safety, and housing standards required by law, and which make it suitable for occupation by the tenant. And while the Tenant did not provide sufficient evidence to establish the value of this damage or loss, I find there is sufficient evidence to award nominal damages, pursuant to PG #16, as noted above.

In this set of circumstances, I award the Tenant a nominal amount of ten percent of her claim or \$1,530.00. This award addresses the losses suffered, as a result of the Landlord's failure to maintain the rental unit in a state which makes it suitable for occupation, pursuant to the Act and PG #16.

The Tenant's claim also addressed issues she experienced with mould, power loss, heat loss, improper entry by the Landlord, and electrical issues. However, I find that the Tenant did not provide as much evidence of these claims as she did for the silverfish claim, and therefore, they are more difficult to analyze. Further, as with the silverfish claim, the Tenant failed to provide evidence setting out the value of the other claims. Accordingly, I find it unnecessary to analyze these other claims, since I would dismiss them due to the deficiency in the value of the claims.

The Tenant is awarded nominal damages of \$1,530.00 or ten percent of her claim, pursuant to sections 32 and 67 and PG #16. I grant the Tenant a Monetary Order of **\$1,530.00** from the Landlord.

Conclusion

The Tenant's claims for compensation from the Landlord are predominantly unsuccessful. The Tenant failed to provide sufficient evidence of the value of the claims to establish a germane award. The Tenant's Application is dismissed wholly without leave to reapply. However, the Tenant is awarded nominal damages of **\$1,530.00** from the Landlord. This award is granted, because given the Tenant proved on a balance of probabilities that the Landlord breached the Act, which caused the Tenant to incur damage or loss, as a result.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$1,530.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 08, 2021

Residential Tenancy Branch