



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DORSET REALTY GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RR, RP, FFT

Introduction

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

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order allowing the tenants to reduce rent of \$900.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 32; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 29 minutes.

The landlord's agent confirmed her name, spelling, the rental unit address, and provided an email address for me to send this decision to the landlord after the hearing. She stated that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf. She said that the landlord company is an agent for the owner and that she had permission to speak on the owner's behalf as well.

The tenant provided an email address for me to send this decision to both tenants after the hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). The landlord and the two tenants all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

The landlord’s agent confirmed receipt of the tenants’ application for dispute resolution hearing package and the tenants confirmed receipt of the landlord’s evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants’ application and the tenants were duly served with the landlord’s evidence.

At the outset of this hearing, the tenant confirmed that the tenants would vacate the rental unit by January 31, 2022, and the tenants did not require their application for an order to comply and for repairs to the rental unit. I informed the tenants that these portions of their application were dismissed without leave to reapply. They confirmed their understanding of same.

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 3:30 p.m. on January 31, 2022, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that they will complete a move-out condition inspection at the rental unit at 3:30 p.m. on January 31, 2022;

3. The tenants agreed that this settlement agreement constitutes a final and binding resolution of their application at this hearing, except for their monetary claim.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties affirmed that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

The tenants stated that they did not want to settle their application for a monetary claim and the filing fee, so they asked that I make a decision. Below are my findings.

Issues to be Decided

Are the tenants entitled to an order allowing them to reduce rent of \$900.00 for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the \$100.00 filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The landlord's agent and the tenant agreed to the following facts. This tenancy began on June 1, 2019. Monthly rent in the current amount of \$1,490.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by the landlord and the tenant and a copy was provided for this hearing.

The tenants seek monetary compensation of \$900.00. The landlord disputes the tenants' claim.

The tenant testified that of the four different apartments that she has lived in, in the same city, she has never had an active mouse infestation before.

The male tenant testified regarding the following facts. The tenants dealt with the mouse problem in the apartment for six months. Rodent droppings are an active health hazard to people. The pest control completed by the landlord was inadequate. The weather stripping around the doors was eaten away. The tenants had to vacuum the couch and the bed. The tenants did not submit any receipts for their monetary claim. The tenants incurred expenses for cleaning but did not submit those receipts for this hearing. The tenants picked a random number of \$900.00 because they felt it was sufficient based on their monthly rent, the six months in the apartment that they had to live with mice, and a loss of quiet enjoyment. It is the landlord's responsibility to maintain the rental building. The pest control company was not laying traps in the hallways or the common areas of the rental building. In conversations with the pest control company, the tenants were told that the mice were a building-wide issue, not just an issue in the tenants' apartment. The letter dated November 29, 2021, from the pest control company, stated that the tenants told them not to use pesticide and that the tenants sealed behind the baseboard heater, which is not true. The tenants submitted pictures, videos, and screenshots of text messages, as well as a blank monetary order worksheet regarding this claim.

The landlord's agent testified regarding the following facts. On March 23, the caretaker produced a report, which references pest control coming the next day. On April 23, there was a conversation regarding the traps, the tenants had not seen any recent activity of mice, and the tenants were unsure if traps were in place. This is a joint effort between the tenant occupants and pest control to get rid of the mice. Food cannot be left out because it is a source for rats. The landlord completed pest control and door sweeps. The landlord sent an email to the tenants on November 4, 2021, to follow up with the tenants, and no reply was received from them. The landlord, the building caretaker, and the pest control company all worked efficiently to keep the mouse problem under control. The landlord produced letters from the pest control company and the building caretaker. The pest control company has a monthly program with the landlord, to put traps in the rental building.

Analysis

At this hearing, the tenants stated that they were seeking a loss of quiet enjoyment for having to live with a mouse infestation at the rental unit. They did not indicate that they were seeking a rent reduction for past or future rent.

The following RTB *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

During this hearing, I repeatedly informed both tenants that as the applicants, they had the burden of proof to prove their monetary claim on a balance of probabilities. I find that the tenants did not properly present their claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 29 minutes so the tenants had ample opportunity to present their application and respond to the landlord's claims. However, the tenants failed to go through their documents and videos that were submitted for this hearing. During this hearing, I repeatedly asked the tenants if they had any other information to present and to respond to the landlord's claims. I even referenced the tenants' documents and videos repeatedly and asked about them, but the tenants failed to go through same.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;

- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the *Act* states the following:

Landlord and tenant obligations to repair and maintain

32 (1) 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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application for \$900.00, without leave to reapply.

I find that the landlord provided sufficient testimonial and documentary evidence, including a letter from the pest control company, and a timeline including text messages and emails between the building caretaker and the tenants. The landlord's agent referenced and explained these documents during this hearing. I find that the landlord provided sufficient evidence to show that the landlord paid for ongoing professional pest control at the rental unit and the rental building, in response to the tenants' complaints. The pest control company documented ongoing pest control treatments in the rental unit and the rental building between May and November 2021, in their letter, dated November 29, 2021.

I find that the landlord adequately dealt with the tenants' complaints about mice at the rental unit, in a reasonable time period, in accordance with its obligations under section 32 of the *Act*. I find that the landlord immediately paid for and had pest control professionals inspect and treat the rental unit, upon reporting of the mouse problem from the tenants. The landlord continued to follow up with the tenants, through the building caretaker and the pest control company. The letter from the pest control company states that pest control was completed in the rental unit and building from May to August 2021. The letter states that no reports were received regarding mice at the rental unit, from the tenants, from September to October 2021. I find that the landlord acted immediately and with due diligence, upon notification of a mouse problem from the tenants. I find that the tenants failed part 2 of the above test.

I find that the tenants did not prove that the landlord wilfully or negligently caused the mouse problem, or that the landlord delayed in responding to this issue in the rental unit. The tenants agreed that the landlord paid for and had pest control professionals inspect and treat their rental unit for mice. I find that the tenants failed part 2 of the above test.

I find that the tenants were unable to justify the \$900.00 amount being claimed. They did not produce receipts, invoices or estimates to show the cost of their damages or losses. The male tenant stated that he had receipts for cleaning expenses, but the tenants did not provide same for this hearing. The tenants did not show how they arrived at the \$900.00 amount, despite being asked by me repeatedly during this hearing. The male tenant claimed that the tenants picked a random number for the loss of quiet enjoyment and agreed that they did not provide documentary proof of same. The tenants provided a copy of a blank monetary order worksheet, with no details or breakdown of their monetary claim. During this hearing, the tenants did not reference or explain the photographs, text messages, or videos that they provided as evidence for this hearing. I find that the tenants failed part 3 of the above test.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

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: January 10, 2022

Residential Tenancy Branch