



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMMEUBLES NATALIE DBA VILLA NATALIE and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, FFT

Introduction

On November 5, 2021, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to request a retroactive rent reduction for repairs, services or facilities agreed upon but not provided, for a monetary order for monetary loss or other money owed, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord and the Landlord’s Property Manager (the “Landlord”) as well as the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

The parties agreed that the Tenant severed their documentary evidence to the Landlord. However, the Tenant claimed that they did not receive a copy of the Landlord’s evidence package. The Landlord testified that they sent their evidence package to the Tenant on December 20, 2021, by Canada Post Registered mail, providing a tracking number as proof of service. The Tenant testified that they did not receive the mailing as they have not been staying at the rental unit, and therefore, they could not have been served these documents at that address.

The Tenant was asked what address they provided for service on their application for these proceedings. The Tenant testified that the address they provided for service on their application for these proceedings was the rental unit.

I accept the Landlord's testimony supported by their documentary evidence that they sent their evidence package to the Tenant through Canada Post Registered mail, at the address the Tenant provided for service on their application for these proceedings. Section 90 of the *Act* states that documents served by mail are deemed received five days after they were mailed; therefore, I find that the Tenant was deemed to have received the Landlord's evidence package on December 29, 2021, the first business day following the five days service provision, and that the Tenant had been duly served with the Landlord's evidence package in accordance with the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Is the Tenant entitled to a monetary order for monetary loss or other money owed?
- Is the Tenant entitled to the recovery of the filing fee of her application?

Background and Evidence

While I have considered all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on September 1, 2015, as a one-year fixed term tenancy that rolled into a month-to-month tenancy after the initial fixed term. The tenancy agreement recorded that rent started in the amount of \$825.00 payable on the first day of each month, and the Tenant had paid a security deposit of \$412.50 at the outset of this tenancy. A copy of the tenancy agreement was submitted into evidence by both the Landlord and the Tenant.

The Tenant testified that they reported a mouse infestation in their rental unit to the Landlord on November 3, 2021. The Tenant testified that the Landlord attended the rental unit that same day, inspecting the rental unit where the mouse had been seen and setting out mouse traps. The Tenant testified that they were uncomfortable staying in the rental unit with a mouse, so they packed a few things and went to stay somewhere else.

The Landlord agreed that the Tenant had reported a rodent infestation to them on November 3, 2020, and that they attended the rental unit that same day. The Landlord testified that they put out some mouse traps and inspected property to determine how the rodents may have gotten in the building. The Landlord testified they did find a hole in which the mouse may have gotten in, so they patched the hole and put out some more traps around the property to catch mice. The Landlord also testified that the Tenant had told them they would often leave the patio door open in the rental unit.

The Tenant testified that they did leave the door open occasionally, when they were at home, to let in fresh air, but that they never left the door open when they were out.

The Tenant testified that over the next few weeks, they attended the rental unit several times, as they were staying elsewhere due to the mouse, to collect personal items and check the condition of the rental unit. The Tenant testified that between November 3, 2020, and December 18, 2021, the only treatment measure used by the Landlord was to put out mouse traps. The Tenant testified that on December 23, 2020, the Landlord had reported to them that the traps were working well but that the Tenant did not feel this sufficient treatment to resolve the infestation.

The Tenant testified that on February 10, 2021, the Landlord advised them that the mouse infestation had been resolved. The Tenant testified that they attended the rental unit to clean before they moved back in, stating that they spent several hours cleaning up mouse droppings and that they found several of their personal items had been chewed or pooped on during the infestation.

The Tenant testified that on April 13, 2021, they found new mouse droppings in their rental unit and immediately reported this to the Landlord, who told them that they would call a professional pest control company to deal with the problem.

The Landlord testified that they hired a local pest control company to deal with the rodent infestation. The Landlord testified that the pest control company attended the

rental property on April 21, 2021. An inspection of the Tenant's rental unit was completed, during which the inspector found a large amount of food in a lower cupboard. The Landlord testified that the pest control company recommended this food be put in sealed containers and placed on a higher shelf. The Landlord also testified that the pest control company put out several traps in the Tenant's rental unit and around the rental property. The Landlord submitted an invoice for the April 21, 2021 pest control services into documentary evidence.

The Landlord testified that the pest control company attended the rental property four times between May 14 to June 2, 2021, and that during these service calls, the pest control company monitored previously set traps, set up new traps, filled a gap in the wall, and set up several bait stations. The Landlord testified that during the last three pest control visit to the rental property, the pest control personnel found "no evidence of rodent activity." The Landlord submitted one invoice for these four pest control service calls into documentary evidence.

The Landlord testified that they continued to employ the pest control company to monitor for activity between June to October 2021. The Landlord submitted three more invoices for pest control services into documentary evidence. The Landlord testified that the infestation had been successfully treated.

The Tenant testified that the method of treatment chosen by the Landlord took too long and that they should have used a spray to get rid of the mice more quickly. The Tenant submitted that they feel they should be awarded the recovery of all their rent paid during the treatment period and the replacement costs of their chewed and pooped on items due to how long it took the Landlord to resolve the problem.

The Landlord testified that the pest control company advised that they no longer spray due to the harm that the spray causes to indoor pets and outdoor wildlife. The Landlord also testified that they acted on the Tenant's calls to deal with the infestation right away and that it did not take them very long to deal with the problem.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant is claiming compensation in the amount of \$11,772.00, consisting of \$840.00 for damaged property and \$10,932.00 in a retroactive rent reduction due to losses associated with the rodent infestation of the rental property. Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if the Tenant is entitled to their claim, I must first determine if there had been a breach of the *Act* by the Landlord in how they dealt with the reported rodent infestation. Section 32 of the *Act* states the following regarding maintenance of the rental property:

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.

I accept the agreed-upon testimony of these parties that the Tenant reported a rodent infestation to the Landlord on November 3, 2020. I also accept the agreed-upon testimony of these parties that the Landlord's Agent attended the rental unit that same day, on November 3, 2020, to initiate treatment of the reported infestation.

Additionally, I accept the agreed-upon testimony of these parties that both the Tenant and the Landlord initially believed that the treatment used in November 2020 had worked and that the infestation had been resolved but that the rodent problem had returned again on April 13, 2021.

I have reviewed the evidence package submitted by the Landlord, noting they have provided six invoices for pest control services that showed they started professional treatment of the rodent infestation on April 21, 2021, completing eight separate treatments to the rental property between April 21, 2021, to October 26, 2021.

After reviewing both the Tenant's and the Landlord's testimony and documentary evidence, I find that this Landlord responded to the reported rodent infestation on the rental property in a timely and professional manner.

Overall, I find that the Tenant has not proven that the Landlord has breached the *Act* in addressing the rodent infestation on the rental property during this tenancy. Accordingly, as the Tenant has failed to prove a breach of the *Act* by the Landlord, I dismiss the Tenant's application for a retroactive rent reduction and for a monetary order for monetary loss or other money owed.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this claim, I decline to award the return of their filing fee for this application.

Conclusion

I dismiss the Tenant's application in its entirety.

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 26, 2022

Residential Tenancy Branch