



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, MNDCT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on November 3, 2021 seeking the following:

- repairs to the unit, after contacting the Landlord in writing;
- the Landlord's compliance with the legislation and/or the tenancy agreement;
- compensation for monetary loss/other money owed;
- reimbursement of the Application filing fee.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. Representatives for the Tenant (hereinafter the "Tenant") and representatives for the Landlord (hereinafter the "Landlord") both attended the hearing, and I provided each the opportunity present oral testimony and make submissions during the hearing.

The Landlord confirmed receipt of the notice for this hearing, along with the Tenant's prepared evidence. The Tenant also confirmed they received the Landlord's evidence in advance. On this basis the hearing proceeded.

Issues to be Decided

- Is the Landlord obligated to make repairs where the tenant had previously made the request, pursuant to s. 65 of the *Act*?

- Is the Landlord obligated to comply with the legislation and/or the tenancy agreement, as per s. 62 of the *Act*?
- Is the Tenant entitled to a monetary order for loss or compensation pursuant to s. 67 of the *Act*?
- Is the Tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in their evidence and both parties spoke to the basic terms of the agreement in the hearing. The tenancy started in 2003 and continues through to the present. As of the time of this hearing, the Tenant paid rent of \$1,053 per month.

The Tenant provided a written account with a timeline. This sets out how they first discovered the rental unit bed bug problem in January 2021. They reported the issue to management on January 6, 2021, with pest control treating the rental unit on January 26, 2021 and February 24, 2021. The initial treatment required the Tenant to “wash all clothes, linen in hot water and to pack in plastic bags for two weeks” and stay in a hotel overnight.

By April 9, the Tenant found more bed bugs in their rental unit. Again, the rental unit was sprayed and vacuumed. The source of the infestation was found to be the adjacent rental unit, and that started an end-of-tenancy process with that unit occupant, set for May 30, 2021. There was another cleaning in the Tenant’s unit at the start of May, and the Landlord offered an alternate rental unit for free. Because of its location and inconvenience, the Tenant declined the offer.

Through June, the adjacent unit occupant still had not moved out because of a dispute resolution process. The pest control agency visited in June and found no bugs; however, the Tenant felt more bites on June 14. During this time other rental units in the building were treated. The Tenant was accepting of the difficulty and managing with ongoing bites and seeking updates throughout July. The Landlord made an inquiry on a heat treatment for the issue; however, that procedure was limited due to the reach of the equipment. Additionally, it is an onerous and expensive process.

The adjacent rental became vacant on September 30; however, further treatments were delayed because of the lengthy process of removing that resident's belongings. The Tenant's own rental unit still required spraying in August. The Tenant was working with an advocate who was advising the Landlord on the efficacy of heat treatment due to the extent of the problem. By mid-October, the treatments were set to continue at bi-weekly intervals. The Landlord confirmed during this time there were no alternate apartments for the Tenant's own use.

In sum, the Tenant notes that in 2021 they have been displaced from their home at least six times at their own expense. In addition, there have been expenses for "cleaning, laundry, hotels, meals, transportation and additional expenses.", with no offer of compensation. This continued for seven months, even after the neighbouring resident had moved out.

The Tenant submits they incurred costs and losses for this pest problem over the past year. They provided a list as follows:

Description	Cost
furniture move & baseboards & light plates removed	400
mattress cover purchase	109
new phone installed	86
bed bug spray	160
two nights in hotel – Jan. 26 & May 19	315
four sets of stained sheets from bed bugs	240
extra laundry costs	200
compensation for rent, suffering, mental anguish	2,500
TOTAL	4,010

The Tenant submitted copies of their letters to the Landlord showing how they identified the issues to the Landlord. They also provided copies of their communication with a seniors advocate on this issue.

In the hearing, the Tenant reiterated there is no plan for heat treatment. They declined the offer of another unit available elsewhere and decided to tough it out; however, they later indicated their interest, but the Landlord did not comply with this. They also made the request for their own carpet to be torn out and replaced that the Landlord declined. They felt the Landlord was insinuating that the Tenant here was the problem.

The Landlord prepared their own written timeline. They started treatment in many units within the building by the end of January 2021. They reminded the Tenant to vacuum and manage their clothing appropriately using bags, and in that time scheduled treatments on a regular basis. In late November, the Tenant would deal with the pest control agent directly.

The neighbouring suite (the source of the infestation) was “vacant since Sept 30th, suite was completely redone and treated on Oct 15.” Ongoing treatments within the Tenant’s own rental unit were hampered by the Tenant’s inability to keep up with vacuuming at least once per week, and management of clothing as required for treatments. The Landlord noted: “According to [the pest control agent], treatment would not be completely effective due to the lack of maintenance done in the suite” and this was “now affecting other tenants in the building.”

In their documentation, the Landlord included information on bed bugs, and treatment preparation guidelines from the pest control agent. This involves a substantial amount of work, with follow-up treatments “approximately 10-14 days after the initial treatment.” The Landlord also included invoices from the pest control agent, some of which pre-date the Tenant’s own reporting on the bed bug issue in their rental unit. These treatments were ongoing throughout 2021, approximately bi-weekly in frequency.

In the hearing the Landlord reiterated that heat treatment would not be feasible or effective for this rental unit that is above the 8th floor, with the equipment needing a solid concrete foundation and unable to reach to the Tenant’s own rental unit. The spraying throughout 2021 continued for many units in the building, because the adjacent unit resident contested the end-of-tenancy notice from the Landlord, and this prolonged the treatments much longer than anticipated.

The Landlord acknowledged the carpet was the original in the unit from the time the Tenant moved in. The Tenant proposed new carpeting because eggs are a problem within the rental unit and removing the carpets and baseboards fully should enable more thorough cleaning. They proposed a shampooing of the carpet, and the Tenant’s family would visit to assist in the process. The Landlord expressed their reservations about replacing the carpet at this stage with the bedbug issue still ongoing; however, they agreed that shampooing would freshen up the rental unit.

Analysis

re: Landlord’s obligation to repair and maintain, and compliance

During a tenancy, a landlord and a tenant each have obligations to repair and maintain, as set out in s. 32 which states:

- (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 the tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit . . .
- (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 . . .

The key question stems from the infestation of bedbugs, clearly causing a problem for both the Landlord and Tenant in this scenario. From the evidence I find there was a firm approach to the problem, requiring the contribution from both the Landlord and the Tenant. I find the Landlord complied with s. 32 where they hired a firm to take on the large job of handling the infestation which spanned across several units in the building. This is with due regard to both subsection (1)(a) and (b). There were several ongoing treatments in the Tenant's own unit, definitely due to the source of the problem being in the adjacent unit.

The Landlord undertook ending the tenancy in the adjacent unit for this reason. This is not a simple process when that resident challenged the Landlord's right to end the tenancy in that manner. This added months to the timeline for eradicating, or at least effectively managing, the pest problem. This was not due to Landlord's inaction or otherwise shirking of their responsibilities and obligations to the building residents. I find ending that tenancy was integral to stopping the problem with bedbugs.

I find the Landlord's evidence shows the pest control agent identified a roadblock in the Tenant's own unit, in the form of the Tenant's inability to prepare for treatments, with preparing their clothes, and ongoing vacuuming. This is *not* a statement that the Tenant was not maintaining reasonable health, cleanliness, and sanitary standards within the rental unit. These are exceptional circumstances, and I heard no statements from the Landlord blaming the Tenant for any ongoing difficulties.

In this situation, I find it appropriate for a thorough carpet shampooing and cleaning to take place. The Landlord acknowledged the carpet in the rental unit was there for quite some time; however, I agree a replacement is not in order at this time with the state of

the ongoing pest problem. A thorough carpet cleaning in the unit should afford the Tenant the opportunity to take stock and assist with prioritizing items within the rental unit for easy packing when the need arises with subsequent treatments. This is a collaborative effort where it is now not possible for the Tenant to move anywhere else and deal with that larger inconvenience and interruption to their lifestyle.

The Tenant pressed for a heat treatment solution for the pest problem. I accept the Landlord's testimony that this is not even possible where the equipment cannot reach and function. I find the Landlord has considered the possibility, and, given the great expense already involved in the pest problem, is not simply declining this request because of the cost involved. I find it more likely than not that this form of treatment is not available for this type of building. Additionally, it is not definitively proven that heat treatment will effectively end the pest problem altogether. I find the Landlord already tackled the issue at its source in the adjacent unit. This was the more achievable result in the best interests of all buildings tenants.

In sum, it is not possible to conclude the Landlord has not complied with their statutory obligations to repair and maintain the rental unit for the Tenant here. I make no separate order for repairs where the Landlord is clearly engaged in an ongoing process throughout the building and has completed the large task of ending the tenancy in the adjacent unit. The situation is challenging, and I find the evidence shows the Landlord has been diligent throughout in responding to the Tenant's queries and complaints, as shown in the Tenant's own record of all communications on this issue.

I order carpet cleaning in the rental unit, at the Landlord's expense, by March 18, 2022. Aside from this, I dismiss these sections of the Tenant's Application, without leave to reapply.

re: Tenant's claim for compensation

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In this situation, I find there was no violation of the *Act*, or the tenancy agreement by the Landlord. The record shows many repeat treatment visits, and the Landlord's full acknowledgement of the difficulty faced by the Tenant. Aside from this, the Tenant did not provide records of the expenses to them. This normally is in the form of invoices or receipts. For these reasons, I dismiss the Tenant's Application for compensation.

The largest piece of their claim for compensation concerns a compensation for rent. This is not expressed in terms of a set amount per month that the Tenant feels they were deprived of the full use of their rental unit. As such, it exists as only a number, not even an approximation of some definable loss to them.

I dismiss the Tenant's claim for compensation; however, I grant the Tenant leave to reapply.

Because the Tenant was not successful in their Application, I dismiss their claim to recovery of the Application filing fee.

Conclusion

I dismiss the Tenant's Application without leave to reapply. On the claim for compensation, I dismiss the Tenant's Application with leave to reapply.

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

Dated: March 1, 2022

Residential Tenancy Branch