



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, DRI

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 29, 2021 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- To reduce rent for repairs, services or facilities agreed upon but not provided
- To dispute a rent increase that is above the amount allowed by law

The Tenant appeared at the hearing. The Landlord appeared at the hearing with the Witness. The Witness was not involved in the hearing until required. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and Witness provided affirmed testimony.

The Tenant withdrew the request to dispute a rent increase that is above the amount allowed by law.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. The Landlord confirmed receipt of the hearing package and Tenant’s evidence and confirmed there are no issues with service.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed there is a written tenancy agreement between them which started in July of 2003 and is a month-to-month tenancy. The Tenant testified that rent is \$675.00 per month, but has been reduced to \$525.00 per month. The Landlord testified that rent is \$660.00 per month and has not been reduced. The parties agreed rent is due on the first day of each month. The parties agreed the Tenant paid a \$240.00 security deposit and no pet damage deposit.

The Tenant confirmed both claims arise from a bed bug issue in the rental unit. The Tenant clarified that they are seeking \$5,739.15 in compensation and a rent reduction from December 29, 2021, to present and moving forward until the bed bug issue is addressed.

The Tenant testified as follows. They found bed bugs in their unit November 04, 2021, and let the building manager know. The manager called pest control which was supposed to attend November 11, 2021; however, they did not show up. Pest control showed up on November 16, 2021, and heat treated the unit. There were still bed bugs in the unit after it was heat treated. Chemicals had to be used to further kill the bed bugs which seemed to be gone as of November 25, 2021. On December 29, 2021, the bed bugs came back, and the Tenant let the manager know. The manager would not do anything about the bed bugs and has tried to evict the Tenant over this issue. The Tenant is still dealing with bed bugs in the unit.

The Tenant submitted that the Landlord breached the *Residential Tenancy Act* (the "Act") due to the time it took the Landlord to have pest control attend to deal with the bed bugs in November of 2021. The Tenant submitted that the Landlord also breached the *Act* because the bed bugs were still present after the heat treatment. The Tenant further submitted that the manager told the Tenant the Landlord would pay for the Tenant's costs associated with the bed bug issue.

The Tenant sought compensation for the costs related to removing items from the rental unit and storing them. The Tenant testified that the items had to be removed because they could have been damaged by the heat treatment. The Tenant testified that they removed clothing, furniture, models and speakers from the rental unit.

The Tenant sought compensation for replacing a computer chair that the Landlord or pest control company threw out due to it having bed bugs on it.

The Tenant sought compensation for rent from November 04 to 25, 2021, the period during which the bed bugs were an issue in the rental unit.

The Tenant sought compensation for rent from December 29, 2021, to present because the Landlord has not done anything about the further bed bug issue in the rental unit.

The Tenant sought registered mail costs associated to this hearing.

The Tenant sought a rent reduction for their full rent amount moving forward until the bed bug issue is addressed. The Tenant testified that they had to stay at their sister's house from December 20, 2021, to March 02, 2022, due to the bed bug issue.

The Landlord testified as follows. The Landlord did everything they could to address the bed bug issue in the rental unit. The Landlord contacted the pest control company immediately when the Tenant told them about the bed bug issue in November. The Landlord told the Tenant not to remove belongings from the rental unit because there is then a chance of bringing the bed bugs back. The Landlord booked the pest control company who could not make it on the first date booked because their machine broke down. Pest control attended the rental unit November 17, 2021 to heat treat the unit. The November 17, 2021 heat treatment was the third time pest control has had to attend the rental unit to treat it for bed bugs. The rental unit was heat treated which got rid of the bed bugs. It is the Tenant who is bringing the bed bugs back into the unit after the heat treatments are done to eradicate the bed bugs. The bed bugs are not coming from the building as there is no bed bug issue in any other part of the building.

The Witness testified as follows. They are a pest control expert. They first heat treated the rental unit in October of 2018 despite not seeing evidence of bed bugs. A month later, the Tenant said bed bugs had returned. In November of 2018, they treated the rental unit again despite not seeing evidence of bed bugs.

The Witness further testified as follows. On November 17, 2021, they heat treated the rental unit again. The Landlord would have contacted them a week or 10 days before they attended the unit because it takes time for the unit to be prepared for the treatment. They did not find bed bugs in the rental unit but did find some on the Tenant's computer chair. The Landlord removed the chair, which was old and ripped, due to the bed bugs. The Tenant was not supposed to take things out of the rental unit before the heat treatment but did. The Tenant could have brought bed bugs back into the unit when they brought items back to the unit after the heat treatment. The heat treatment can cause damage to things such as oil paintings, chocolate, lipstick and combustibles. The heat treatment cannot damage computers or instruments. Items that should not be heat treated are usually put in the bathroom because the heat does not go as high in this area. The heat treatment would never damage clothing or furniture.

The Witness further testified as follows. The Landlord is very proactive about dealing with bed bugs in the rental unit building. They have treated other units in the building and have never had to go back a second time to re-treat those units. The Tenant knows what must be done to prepare the unit for the heat treatments because they have told the Tenant this personally and have treated the unit three times.

In reply, the Tenant denied that anybody told them what should be removed from the rental unit for the heat treatment.

The Tenant submitted documentary evidence such as notes from the Tenant to the manager, notes from the manager to the Tenant, inspection notices, receipts, a bed bug preparation print-out and photos of bed bugs.

Analysis

The sections of the *Act* relevant to compensation are as follows:

Section 7 of the *Act* states:

7 (1) If a landlord...**does not comply with this Act, the regulations or their tenancy agreement**, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Act* states:

67 Without limiting the general authority in section 62 (3)...if damage or loss results from a party **not complying with this Act, the regulations or a tenancy agreement**, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Section 65 of the *Act* addresses rent reductions and states:

65 (1) Without limiting the general authority in section 62 (3)...if the director finds that a landlord or tenant **has not complied with the Act, the regulations or a tenancy agreement**, the director may make any of the following orders...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement...

The Landlord has an obligation to maintain the rental unit in accordance with section 32 of the *Act* as follows:

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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I am not satisfied based on the evidence provided that the Landlord failed to act in a timely manner when told about the bed bug issue November 04, 2021. I accept based on the testimony of the Landlord and Witness that pest control attended the rental unit November 17, 2021, to heat treat the unit. I do not find 13 days between when the issue was discovered and when pest control attended to be a breach of the *Act* because I find this to be within a reasonable time considering the nature of the issue, that the Landlord had an ongoing relationship with the Witness and their pest control company and the nature of the heat treatment itself. Further, I accept the testimony of the Witness that there is a time lapse between discovering bed bugs and the pest control company attending the rental unit to heat treat it due to the preparation required which I accept can take time as demonstrated by the bed bug preparation print-out submitted. In the circumstances, I find the Landlord addressed the November bed bug issue within a reasonable time and therefore did not breach the *Act* in this regard.

I do not accept that the Landlord breached the *Act* based on there still being bed bugs in the rental unit after the heat treatment was done. I accept based on the evidence provided and testimony of the Witness that the Landlord hired the Witness and their pest control company to heat treat the unit and I have no concerns about the reasonableness of the company hired or treatment done. I found the Witness to be knowledgeable about bed bugs and treatment of bed bugs. I accept the testimony of the Witness about heat treatments being an effective way to eradicate bed bugs and I note this is supported by the bed bug preparation print-out submitted.

In relation to the manager telling the Tenant they would pay for the Tenant's costs associated with the November bed bug issue, there is a note from the manager to the Tenant in evidence stating that the Landlord will pay for the heat treatment and the Tenant can pay for any further costs; therefore, I am not satisfied the parties reached a final agreement about the Landlord paying for the costs claimed in the Application.

In the circumstances, I am not satisfied based on the evidence provided that the Landlord breached the *Act, Residential Tenancy Regulation* or tenancy agreement in relation to the November bed bug infestation. Given this, I am not satisfied the Tenant is entitled to compensation or a rent reduction in relation to the November infestation.

In relation to the December bed bug infestation, I am satisfied the Landlord has not taken further steps to have the rental unit treated for bed bugs because the Landlord did not take the position that they have.

I find the issue in relation to the December bed bug infestation to be whether the recurring bed bug issue is due to the Landlord or others in the building or the Tenant. The Tenant has not provided compelling evidence that the December bed bug issue is due to the Landlord or others in the building and not due to the Tenant themselves. The Landlord testified that there are no bed bug issues in other parts of the building. The Landlord testified that the rental unit has been heat treated for bed bugs three times in the past. The Witness testified that they did not find bed bugs in the rental unit in November but did find them on the Tenant's personal chair. The Witness testified that other units in the building have been heat treated for bed bugs once without any recurring problem. I find there is evidence to suggest the recurring bed bug issue is due to the Tenant.

Further, there is no dispute that the Tenant removed belongings from the rental unit prior to the November 17, 2021 heat treatment. It is clear in the notes from the manager to the Tenant in evidence that the Tenant was specifically told not to remove items from the rental unit. Further, the bed bug preparation print-out does reference removing "un-heatable" items from the unit; however, the evidence provided does not support that clothing, furniture or speakers needed to be removed. The Witness testified that it could be the Tenant bringing items back into the rental unit after the heat treatment that is causing the recurring bed bug issue and I am satisfied there is some evidence before me to support that this is an issue.

In the circumstances, I am not satisfied the Tenant has met their onus to prove that it is the Landlord who has breached the *Act, Residential Tenancy Regulation* or tenancy agreement in relation to the December bed bug infestation. Given this, I am not satisfied the Tenant is entitled to compensation or a rent reduction in relation to the December infestation.

However, I do accept that the Landlord or the pest control company hired by the Landlord threw the Tenant's chair out while treating the rental unit for bed bugs and I find the Landlord must reimburse the Tenant for this. A landlord cannot throw out a tenant's belongings without permission to do so. The Tenant submitted a receipt showing they paid \$223.99 to replace the chair. The Witness testified that the chair was old and ripped and in the absence of further evidence showing the cost or condition of the chair, I am not satisfied the Tenant lost \$223.99. However, I am satisfied the Tenant had to replace the chair and award the Tenant \$100.00 for this as I find this amount accounts for the condition of the chair as stated by the Witness.

As stated to the Tenant at the hearing, registered mail costs associated to this hearing are not recoverable.

Given the above, I am not satisfied the Tenant is entitled to the compensation or rent reduction sought, other than in relation to the chair, because the Tenant has failed to prove a breach of the *Act, Residential Tenancy Regulation* or tenancy agreement by the Landlord.

The Application is dismissed without leave to re-apply, other than as it relates to the chair. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment in relation to the chair.

Conclusion

The Application is dismissed without leave to re-apply, other than as it relates to the chair. The Tenant can deduct \$100.00 from one future rent payment in relation to the chair.

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

Dated: May 04, 2022

Residential Tenancy Branch