



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*.

The tenant and the landlord's property manager (the "property manager") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called witness D.P. who provided affirmed testimony.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the landlord was served with the tenant's evidence, predominately made up of receipts/invoices for alleged losses, and the tenant's

application for dispute resolution, via registered mail in October of 2021. I find that the tenant's application for dispute resolution and the above described evidence were served on the landlord in accordance with section 88 and 89 of the *Act*.

The tenant testified that she served the Residential Tenancy Branch and the landlord with videos and photographs of the subject rental property. No videos or photographs of the subject rental property were uploaded the Residential Tenancy Branch dispute management system. The property manager testified that he was not served with videos or photographs of the subject rental property.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch, not less than 14 days before the hearing.

Based on the lack of uploaded evidence and the property manager's testimony, I find that the tenant did not serve the Residential Tenancy Branch or the landlord with the tenant's video or photographic evidence. As the evidence was required to be served not less than 14 days before the hearing, I find that the tenant is not entitled to upload the evidence during or after the hearing.

The property manager testified that the landlord's evidence was served on the tenant via registered mail on May 12, 2022. A Canada Post registered mail receipt for same was entered into evidence. The tenant testified that she received the landlord's evidence within the last month. I find that the tenant was deemed served with the landlord's evidence on May 17, 2022, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

Issues to be Decided

Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 1, 2019 and ended on July 31, 2021. Monthly rent in the amount of \$1,450.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree to the following timeline of events:

- April 2, 2021- tenant provided the landlord with a maintenance request to complete an inspection for bed bugs.
- April 12, 2021- the landlord provided the tenant with a Notice of Entry to complete a bed bug inspection on April 13, 2021.
- April 13, 2021- a pest control company completed a bed bug inspection. Inspection is positive for bedbugs.
- April 20, 2021- the landlord provided the tenant with a Notice of Entry to complete bedbug treatment on April 23, 2021.
- April 23, 2021- the pest control company treated the subject rental property for bug beds.
- May 13, 2021- the landlord provided the tenant with a Notice of Entry to complete bedbug treatment on May 18, 2021.
- May 18, 2021- the pest control company treated the subject rental property for bug beds.
- June 29, 2021- the tenant provided the landlord with notice to end tenancy effective July 31, 2021. Bedbugs are not mentioned on the notice to end tenancy.
- July 5, 2021- the landlord provided the tenant with a Notice of Entry to complete bedbug treatment on July 8, 2021.
- July 8, 2021- the pest control company treated the subject rental property for bug beds.

The property manager testified that on July 14, 2021 the pest control company inspected the subject rental property with a K-9 unit and found no bed bug activity, meaning the subject rental property no longer had a live bed bug infestation. The landlord entered into evidence a bed bug detection service report stating same. The

tenant testified that bedbugs were still present at the end of the tenancy.

The tenant testified that she gave notice to end tenancy because of the bedbug infestation. The tenant testified that the treatments completed by the landlord were ineffective. The tenant testified that the pest control company told her than she could not be in the subject rental property for eight hours after the treatment. The tenant testified that she has two young children and could not be out and about with them for eight hours, so she got a hotel to stay at on April 23, 2021 and May 18, 2021, after the bed-bug treatments. The tenant entered into evidence receipts from a hotel for the above dates, each in the amount of \$185.59 for a total of \$371.18.

The tenant testified that the bedbugs in her unit were so bad in July 2021, that she could not stay in the subject rental property and had to sleep in a hotel or air bnb for the entire month. The tenant entered into evidence the following accomodation receipts:

- July 6-7, \$193.93
- July 7-9, \$395.37
- July 11-12, \$175.16
- July 12-16, \$794.50
- July 17-18, \$193.26
- July 18-20, \$497.97
- July 20-23, \$521.74
- July 23-25, \$354.96
- July 25-28, \$832.03
- July 28-31, \$595.08

The tenant testified that she stayed at a hotel who could not give her a receipt for July 10, 2021 for \$97.75. The tenant testified that she is seeking the landlord to pay for all accomodation costs listed above.

The tenant testified that she did not have tenant insurance.

The tenant testified that due to the bedbug infestation, she had to throw out her mattresses and furniture infested with bedbugs. The tenant entered into evidence two junk removal receipts, one for \$150.94 and one for \$408.14. The tenant is seeking the landlord to pay for these costs.

The tenant testified that she had to purchase two new mattresses, pillows and a new mattress cover because of the infestation. Two receipts for the above were entered into

evidence, one for \$775.15 and one for \$1,102.08. The tenant is seeking the above costs from the landlord. The tenant testified that the above items were two years old when they were thrown out.

The witness testified that he helped the tenant wrap the bed bug infested items for disposal from the subject rental property by the junk removal company. The witness testified that the bed bug infestation was severe.

The property manager testified that the landlord followed the *Act* to the letter and worked with the pest control company to treat the bed bug problem as soon as possible once it was reported. The property manager testified that the landlord regularly treated the subject rental property for bedbugs and that the treatments were effective as shown in the July 14, 2021 inspection.

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other'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 that without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Residential Tenancy Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the tenant's claim fails.

Section 32 of the *Act* states that 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.

As stated above, in order to be successful in a monetary claim, the applicant (in this case the tenant), must prove that the landlord breached the *Act*, the tenancy agreement or the Regulation.

Based on the agreed upon timeline of events, I find that the landlord acted reasonably and quickly to address the bug bed problem by hiring a pest control company to inspect for bed bugs, and once their presence was confirmed, to treat the subject rental property for bed bugs. I find that the landlord treated the subject rental property for bed bugs three times between April and July of 2021. Based on the July 14, 2021 bed bug detection service report, I find that the bed bugs were successfully eradicated from the subject rental property. I find that the landlord's timely response to the tenant's complaint fulfilled the landlord's duty to maintain the subject rental property found in section 32 of the *Act*.

The tenant has not alleged that any other section of the *Act*, tenancy agreement or Regulation was breached, nor are any such breaches readily apparent.

Since the tenant has not proved that the landlord breached the *Act*, tenancy agreement or the Regulation, the landlord is not responsible for the damages suffered by the tenant as a result of the bedbugs. I therefore dismiss the tenant's application for dispute resolution without leave to reapply.

Conclusion

The tenant's application for dispute resolution 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: June 02, 2022

Residential Tenancy Branch