



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALSTAR PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 19, 2021 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing with N.S., their advocate. The Tenant called two witnesses at the hearing, T.H. and M.R. S.M. appeared at the hearing for the Landlord. 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 witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

S.M. confirmed receipt of the hearing package. S.M. testified that the Landlord did not receive the Tenant’s evidence. N.S. testified that the Tenant’s evidence was sent to the Landlord by registered mail on April 14, 2022. N.S. provided Tracking Number 475. I looked Tracking Number 475 up on the Canada Post website which shows a notice card was left in relation to the package April 20, 2022, but the package has not been picked up.

Based on the testimony of N.S., Tracking Number 475 and the Canada Post website information, I find the Landlord was served with the Tenant’s evidence in accordance with section 88(c) of the *Residential Tenancy Act* (the “Act”). Pursuant to section 90(a)

of the *Act*, the Landlord would usually be deemed to have received the package April 19, 2022. However, the Landlord is deemed to have received the package April 20, 2022, because this is when Canada Post attempted to deliver it. I find the Tenant complied with rule 3.14 of the Rules in relation to the timing of service. In the circumstances, the Tenant's evidence is admissible.

The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and 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?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant seeks \$4,500.00 in compensation for damage to their furniture and belongings caused by a mouse infestation in the rental unit and building.

A written tenancy agreement was submitted. The tenancy started April 01, 2017. Rent was \$1,725.00 due on the first day of each month. The parties agreed the tenancy ended July 31, 2020.

S.M. confirmed the Landlord owns the rental unit.

The Tenant provided written submissions which can be summarized as follows.

The Landlord failed to exterminate a mouse infestation in the rental unit and building during the spring and summer of 2020 which resulted in damage to the Tenant's furniture and belongings. The Landlord did not take sufficient steps to address the mouse infestation in breach of section 32 of the *Act*.

The Tenant first heard about mouse issues in the building from their neighbours in 2018. The Tenant was told there had been mouse issues in the building for many

years. The Tenant first observed a mouse in their rental unit in November of 2019 and reported this verbally to an agent for the Landlord. The Tenant also observed mouse feces in the garage down the hall from the rental unit. The garage was open such that mice could enter it easily.

On March 20, 2020, the Tenant found a dead mouse in their rental unit.

In April 2020, the Tenant observed mice in the building and several mice within their rental unit. Neighbours told the Tenant they had also observed mice in their units. The Tenant reported the mouse issue to agents for the Landlord verbally. An agent for the Landlord gave the Tenant mousetraps and sticky strips to put around the rental unit and said they would pick up any mice caught. However, the agent for the Landlord would not clean the mouse feces already in the rental unit. The mousetrap did catch several mice in the rental unit.

On May 15, 2020, the Tenant discovered more mouse feces in the rental unit. On May 16, 2020, a pest control company attended the rental unit and placed several mouse traps and poison baits around the rental unit.

The Tenant continued to find mice in the rental unit in June. The mouse issue also continued in the building. The Tenant has heard from other tenants of the building that the mouse issue was still not resolved in the summer of 2021.

The mouse infestation caused damage to the Tenant's sofa and loveseat which were filled with mouse feces and urine. Further, mice chewed the Tenant's towels and linens. Most of the Tenant's belongings were new at the start of the tenancy. The Tenant spent \$4,500.00 replacing their damaged furniture and belongings.

T.H. testified at the hearing. T.H. is a tenant of the rental unit building and has been for approximately seven years. T.H. testified that they once heard what sounded like rodents in the wall of their rental unit when they first moved in. T.H. testified that they had a mouse in their rental unit in May of 2021 and that the mouse came in under their front door. T.H. testified that they did not report either incident described to an agent for the Landlord. In response to S.M.'s questions, T.H. testified that the Landlord did not own the building at the time of the first incident described. T.H. also testified that having mice in the rental unit has not been an ongoing issue since May of 2021.

M.R. testified at the hearing. M.R. is a tenant of the rental unit building and moved in in 2017. M.R.'s rental unit was next to the Tenant's rental unit. M.R. testified about mouse issues in their rental unit. M.R. testified that they bought a door sweep to keep mice out; however, the mouse issue continued. M.R. testified that agents for the Landlord were made aware of the mouse issue. M.R. testified that an agent for the Landlord gave them steel wool to pack around pipes; however, this did not prevent mice from entering their rental unit. M.R. testified about a pest control company attending their rental unit and putting traps in the unit. M.R. testified about doors in the building having gaps and not closing properly. In response to a question from S.M., M.R. testified that they have not had any direct issue with mice since the Tenant moved out.

The Tenant submitted photos of dead mice and mouse feces. The Tenant also submitted an invoice and receipts for furniture and linens purchased in June of 2020.

S.M. submitted as follows. The Landlord did what they were required to under the *Act* to address the mouse issue. The Landlord had two pest control companies attend the building to address the mouse issue once told about it. The agents did collect dead mice from the Tenant when they were at the building. Traps were put down in the rental unit and the Landlord has beep stations around the building. The invoice from one of the pest control companies states that the rental unit had food debris behind the stove and in the cupboards as well as overflowing garbage. The agents for the Landlord believe the Tenant may have brought the mice into the rental unit and building. The pest control companies noted issues with the rental unit which were attracting mice that the Tenant did not address. There have only been occasional mice found in the building since the Tenant moved out. The Tenant would leave their screen and patio door open which was an easy way for mice to come into the rental unit. The Tenant's furniture and belongings were not new but used when they were brought into the building.

The Landlord submitted the following. Emails between the parties about the mouse issue. An invoice for the pest control company showing they installed five mouse bait stations throughout the rental unit May 16, 2020. A Notice of Pesticide Use. Correspondence between agents for the Landlord and N.S.

In reply, the Tenant denied that they left their screen and patio door open as claimed. N.S. submitted that the mouse issue in the building predated the Tenant's arrival and postdated their departure. N.S. submitted that the mouse issue was not contained to

the rental unit but was occurring in the building. N.S. disputed that the Tenant caused the mouse issue.

Analysis

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.

RTB 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.

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 occurred as claimed.

Section 32 of the *Act* states:

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.

I decline to award the Tenant the compensation sought because the Tenant has failed to prove the last three parts of the four-part test outlined in RTB Policy Guideline 16 set out above.

I am not satisfied based on the evidence provided that the Tenant has proven the loss or damage claimed. I do not find that there is sufficient compelling evidence showing the Tenant's furniture and linens were damaged by mice. The photos submitted do not show the damage claimed. There is one email authored by the Tenant referencing mice damaging their towels. However, I do not find that there is further compelling evidence about the damage claimed.

I am not satisfied based on the evidence provided that the Tenant has proven the amount or value of the damage or loss claimed. The Tenant is seeking compensation for the cost of purchasing new furniture and linens. However, the issue before me is the amount or value of the damage allegedly caused to the furniture and linens in the rental unit and affected by the mouse issue. The Tenant has not provided photos or receipts to show the age or condition of the furniture and linens allegedly damaged. Although the Tenant submits that the furniture and their belongings were new, S.M. disputes this. I do not find the evidence provided on this point compelling.

Further, I am not satisfied based on the evidence provided that the Tenant mitigated the damage or loss claimed. There is evidence before me from one of the pest control companies which notes that the Tenant's rental unit was in a state that would attract mice at the time of their inspection. As well, the Tenant has not provided compelling evidence showing the nature and extent of the damage claimed such that I can determine whether disposing of the belongings was required rather than cleaning of the belongings.

Given the above, I am not satisfied the Tenant has proven the four-part test set out in Policy Guideline 16 and therefore dismiss the claim without leave to re-apply.

Given the Tenant has not been successful in the Application, they are not entitled to recover the filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

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: June 01, 2022

Residential Tenancy Branch