Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes : **RR, OLC, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenants to reduce rent for repairs, services or facilities authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset, I advised the parties of Rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing.

I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue: Service of Documents

The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The Notice of Dispute Resolution Package and evidence was sent Canada Express Post and the tenant did not request a signature option. Two separate packages were sent to the landlords. The Canada Post tracking numbers are recorded on the cover of this decision. The landlords stated that they received an incomplete evidence package on September 26, 2022. The text message chain, the photos, and the power point were not included in the landlords' package.

Rule 3.1 states:

> **Documents that must be served with the Notice of Dispute Resolution Proceeding Package**
>
> The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
b) the Respondent Instructions for Dispute Resolution;
c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

The tenant confirmed she sent the evidence to the landlords and the Residential Tenancy Branch (the " **RTB**") late, stating that she is a new immigrant to the country and missed the notice from the RTB. It wasn't until she received an email from the RTB inquiring if she wanted to proceed that she submitted the required information. She further confirmed that she did not send the photos or the power point to the landlords for "privacy" reasons.

I gave the landlords the option to adjourn the hearing to allow them the opportunity to review the evidence and to obtain the missing evidence, the landlords stated they preferred to proceed with the hearing and waived their right to see and review the missing evidence.

The landlords testified, and the tenants confirmed, that the landlords served the tenants with their evidence package. The tenant stated that she did not receive a copy of the text messages submitted into evidence. The texts were between the tenant and landlord and the tenant was familiar with the content. Despite this, the tenant confirmed she wanted to proceed with the hearing.

The evidence was not provided to the landlord or tenant in accordance with the Act or the Rules. **Rule 3.17** allows the arbitrator discretion to accept evidence that does not meet the established criteria as long as the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Both parties had the opportunity to speak to the matter of late evidence. The parties were given the option of an adjournment to provide time to review the evidence and declined.

The hearing proceeded and I admitted all the evidence submitted to the RTB by the parties into evidence, by consent of the parties.

Preliminary Issue: Tenancy ended

The tenant stated that she vacated the rental unit on August 7, 2022. The landlord confirmed the tenant moved out on August 7, 2022. As such, I find that the tenancy has ended. Accordingly, the following order sought in the tenant's application is moot:

- An order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62.

I dismiss this portion of the tenant's application without leave to reapply.

Issues to be Decided

Is the tenant entitled to:

1) a reduction in rent in the amount of $1450.00;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting July 14, 2022 for a one-year term, ending July 13, 2023. At the end of the term another fixed term lease could be signed. Monthly rent is $2900.00 and is payable on the 14th of each month. The tenant paid the landlord a security deposit of $1450.00. The landlord still retains this deposit. The rental unit came furnished.

The tenant states that she arrived in BC on July 6, 2022 and lived in a hotel. She hired a rental agency to assist her in finding a rental unit. On July 14, 2022 the tenant participated in a start of tenancy condition inspection and then signed the lease. The rental unit had parquet floors with carpet in the bedroom. The carpet was not new. The mattress was new. There was no evidence of bugs in the mattress or bedframe.

The tenant took possession of the rental unit on July 15, 2022. She started work on July 18, 2022 in a medical facility. The tenant states that around the second week of staying in the rental unit, she noticed bumps on her skin that she described as "bites".

On August 1, 2022, she notified the landlord that there was a problem in the rental unit with bugs and the landlord needed to contact pest control. She thought there was an infestation of bed bugs.

The landlord said they would contact strata to see if any other units were affected as bedbugs are not isolated to one unit. If there is a problem, then it is usually widespread. On August 3, 2022 pest control assessed the unit. No bedbug infestation was found but the technician stated the problem "could be" carpet beetles.

The tenant stated that dogs can be used to detect carpet beetles, or the landlord could simply spray the unit. The landlord told her the unit would be sprayed. The tenant was notified by email that pest control would spray on August 7, 2022 at 10:30 a.m.

The tenant did not seek medical attention for the symptoms until August 3, 2022. The tenant stated that she did not go to a doctor immediately because she did not have BC medical coverage at the time.

The tenant provided a medical note from a dermatologist dated August 3, 2022 which states, "Pt has eruption consistent with arthropod bites. This started shortly after moving in to new apartment. Pest

control felt that carpet could be a source. Has developed dermatograhism as a consequence." [reproduced as written]. The dermatologist did not take skin scrapings and recommended over the counter antihistamines.

The tenant stated that she saw the dermatologist again on August 21 and September 8, 2022 for follow-up but did not submit any follow up medical reports. The tenant states that her skin shows some improvement but the dermatographia and urticaria persists.

Concerned that she might suffer an adverse effect from pesticides such as an allergic reaction and/or develop asthma secondary to pesticide exposure, the tenant moved out of the unit before the suite was sprayed. On August 5, 2022, she notified the landlord by phone of her intention to move and of her intention to break the lease. She requested return of the security deposit. The tenant moved out of the unit on August 7, 2022 at 10:30 a.m. She did not amend this application to include a claim for this amount.

After the tenant vacated the rental unit, the landlords made a claim against the tenants seeking compensation resulting from her vacating the rental unit early. When the tenant learned of this application, she included a monetary order for costs incurred after she left the suite: a one-month hotel stay, bedding and the fee for the rental agency totaling $9973.00.

The landlord confirmed that the tenant signed a 1-year fixed term tenancy agreement and participated in the condition inspection report. Prior to the tenant moving into the unit, the landlord purchased some new furniture and a new mattress. The landlord submitted the invoices as evidence.

The landlords testified they were shocked to hear that the tenant developed a rash/bites that she attributed to the rental unit. On July 23, 2022, the landlords were in the rental unit for over an hour assembling a coffee table for the tenant and she never made mention of bites or complained; hence their surprise when the tenant complained about pests on August 1, 2022.

Within 48 hours of receiving the tenant complaint, the landlord spoke to strata confirming no bed bug infestation had been reported and hired a pest control company to inspect and spray the suite. The technician inspected the suite and stated that there were no blood stains on the mattress and no bugs visible in the bed frame, cracks, crevices, baseboards or mattress. The technician said the "bite" marks were either from bedbugs or carpet beetles. Since no bedbugs were present, he decided it "must be" carpet beetles.

The landlords submitted two invoices from the pest control company: one dated August 3, 2022 in the amount of $63.00 for an inspection and a second invoice dated August 7, 2022 in the amount of $393.75 confirming the suite was sprayed for "carpet beetles". The invoice identified the "Infestation Level" as "low" and the service performed was for "treatment".

The tenant contacted the landlords on August 7, 2022 and told them she moved out of the suite. That was the "notice" provided. The tenant demanded a return of her damage deposit and the landlord refused, telling her she broke the lease. The landlord said they complied with her request to spray the carpet in case there were pests. A text message dated August 3, 2022 confirms the request:

Please let me know about the carpet' spray booking as recommended by pest control today and if there will be any further action (cleaning or replacement)

As this health issue need prevention and immediate action

Thank you

The landlords confirmed that they have applied for dispute resolution to the RTB for lost rental income (file number on cover of this decision).

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

The tenant's application for rent reduction was made pursuant with the following provisions of section 65 of the Act, which allows the director to make an order regarding past and future rent:

> **65** (1) Without limiting the general authority in section 62(3) [director's authority respecting dispute resolution proceedings], 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….

Residential Tenancy Branch Policy Guideline 22 states an arbitrator may order that past or future rent be reduced:

> Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

Section 65(1) of the Act should be read in conjunction with sections 7 and 67:

> **Liability for not complying with this Act or a tenancy agreement**
>
> **7** (1) 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.
>
> (2) 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.

> **Director's orders: compensation for damage or loss**

> **67** 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 Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states in part:

> **C. COMPENSATION**
>
> 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. 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.

The tenant claims she suffered a reduction in her tenancy in the amount of $1450.00 because of bed bug/carpet beetle infestation in the rental unit. The landlord's obligations to maintain and repair facilities in a rental property are set out in s. 32 (1) of the Act, which reads in part 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…..

RTB Policy Guideline 01 states in part:

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

As stated above, section 32 (1) of the Act requires the landlord to ensure the residential property meets the health, safety, and housing standards required by law. Based on my review of the evidence, I find that the landlords fulfilled their obligations under section 32 of the Act and acted in a timely manner. Immediately upon notification of a possible bed bug infestation, the landlords contacted strata to determine if there was a problem in the complex. They coordinated with the tenant and within 48

hours arranged for a pest control technician to inspect and assess for infestation. Despite no confirmed evidence of an infestation, the landlords had the rental unit sprayed on a preventative basis.

Although the tenant may have been inconvenienced by the loss of access to the suite for a few hours while the spraying took place, I am not satisfied that the tenant is entitled to a rent reduction. By the tenant's own affirmed testimony, she moved out of the suite into a hotel on a preventative basis concerned she may react to the "pesticides" used by the pest control technician.

Policy Guideline 16 states that the onus is on the party who suffered the damage or loss to show she acted reasonably to minimize that damage or loss. The *reasonable person standard* refers a person of average caution, care, and consideration.

Canada (AG) v. Albrecht, [1985] IFC 710 has been employed by a number of tribunals to define "reasonable person". *Albrecht* refers to the actions that a "reasonable person" would have taken adopting the definition of "reasonable person" as described in *Arland v Taylor, [1955] O.R. 131 C.A.* at page 142, which reads in part:

> He acts in accord with general and approved practice. His conduct is guided by considerations, which ordinarily regulate a conduct of human affairs. His conduct is the standard 'adopted in the community by persons of ordinary intelligence and prudence'.

Based on the available evidence, I find the tenant made the decision to end the tenancy based on speculation and assumptions not facts. The tenant participated in and signed off on the start of tenancy condition inspection. Having found no evidence of bed bugs, the technician speculated the tenant's signs and symptoms were due to carpet beetles, despite no confirmed carpet beetle infestation.

Although the tenant stated she was concerned about possible side effects of the product(s) used by the technician, there is no evidence the tenant investigated what products were used, requested product Material Safety Data Sheets, or discussed options with the landlord. She unilaterally terminated the lease and left the rental unit.

The dermatologist provided no confirmed diagnosis stating the symptoms were "consistent" with "arthropod bites" that "could" be in the carpet. "Arthropods" include a broad spectrum of insects including, but not limited to, spiders, yellow jackets, fleas, ticks, bedbugs, lice, and scabies. Although it is possible the rental unit was the source of the exposure it is equally possible that a workplace or other exposure may have caused the tenant's signs and symptoms. This is further supported in that the signs and symptoms persist some eight (8) weeks after vacating the rental unit. If the rental unit was the source of exposure, one would expect the tenant's signs and symptoms to significantly improve and/or resolve once no longer exposed to the irritant.

Taking into careful consideration all of the oral testimony and documentary evidence presented and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus proving the application for an order under section 65 of the Act. The tenant's application for a rent reduction is dismissed without leave to reapply.

Although the tenant applied for a "rent reduction", from the written description on the application, it appears the tenant may be asking for return of the security/damage deposit. The landlord has a pending application against the deposit; thus, I am unable to make any order against it.

The tenant seeks compensation in the amount of $9973.00 for expenses incurred during the tenancy and after the tenancy ended. The tenant submitted receipts. Expenses included a one-month hotel stay, linens purchased when the tenant moved into the rental unit, and the cost of the rental agency. The tenant alleges costs were incurred because the landlord failed to ensure health and safety standards and she ended the tenancy.

Section 45(3) of the Act permits a tenant to end a fixed term tenancy:

> **45** (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant did not amend her application to include a monetary award for damages. In any event, based on the testimony and available evidence, I am unable to conclude that the tenant has demonstrated, on a balance of probabilities, that "the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period". The evidence shows the landlord was diligent and acted quickly to address a possible pest infestation.

Pursuant to section 72(1) of the Act, as the tenant was unsuccessful in the application, she is not entitled to recover the filing fee from the landlord.

Conclusion

As noted above 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: October 11, 2022

Residential Tenancy Branch