



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNRT, MNDCT

Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit in the amount of \$300 pursuant to section 33;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$30,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter was reconvened from a prior hearing on October 14, 2022, which in turn was reconvened from a prior hearing on June 13, 2022. I issued interim decisions following each of these hearings. This decision should be read in conjunction with these interim decisions.

The tenant attended the hearing. She was assisted by an advocate ("**SW**"). The landlord was represented at the hearing by its building manager ("**SF**"). SF was assisted by her daughter ("**KF**").

In the October interim decision, I ordered the tenant to serve the landlord and the Residential Tenancy Branch (the "**RTB**") with a monetary order worksheet, particularizing her monetary claim. SF confirmed she received this document.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$30,000 as compensation for loss of quiet enjoyment and emotional distress;
- 2) a monetary order for \$300 as compensation for the cost of emergency repairs; and
- 3) 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 December 1, 2021 and ending November 30, 2022. The tenant vacated the rental unit on June 6, 2022. Monthly rent was \$1,250 (including water and heat) and was payable on the first of each month. The tenant paid the landlord a security deposit of \$625, which the landlord continues to hold in trust for the tenant. No move in condition inspection report was made.

The rental unit is an apartment in a multi-unit apartment building. The tenant lived in the rental unit with her six-year-old daughter, who is autistic.

1. Tenant's Evidence

a. Infestation

The tenant testified that when she moved into the rental unit, it "seemed okay", although she noted that the bedroom carpet had a strong odor and had not been cleaned properly prior to move-in. She testified that within one week of moving in, she saw a bug on the bedroom wall. She was not sure what it was, but verbally told SF. She received no response.

The tenant testified that after one month in the rental unit, she began to see more and more of the bugs, and that they started to bite her. She again told the landlord of the issue. When the tenant's daughter moved into the rental unit in mid-January 2022, the tenant testified that she was bitten as well.

The tenant testified that on January 12, 2022, a representative of the landlord conducted an inspection and checked under the mattress in the bedroom, and found no trace of bedbugs.

On February 8, 2022, the tenant delivered a letter to the landlord requesting the carpets in the rental unit be changed "due to hygienic reasons" and because "it is a very old carpet with a smell." She wrote that her "daughter's health has worsened since [they moved] here she has red dots or marks on her body we don't know if it is a bug bite or allergy from the carpet." The tenant testified that as a result of this, her daughter slept on a pull-out sofa in the living room, rather than in her bedroom.

The tenant stated that SF told her that the landlord would not replace the carpet, and also refused to clean the carpet. Therefore, the tenant rented a carpet cleaning machine spent three hours cleaning the bedroom carpet. After doing so, she testified that the water in the cleaner was "black". She did not provide any photographic evidence to confirm this.

The tenant seeks compensation of \$300.00 for the rental of the carpet cleaning machine and for her labour. She testified she paid roughly \$200 to rent the machine (she did not submit a receipt or invoice confirming this amount) and she seeks \$100 as compensation for her labour.

The tenant testified that the landlord sent pest control to the rental unit on April 27, 2022 to spray the rental unit for bed bugs. She wrote the landlord a letter on April 30, 2022 (which was submitted into evidence), where she stated that her and her daughter have continued to be bitten by bed bugs every day, and the spraying did not resolve the issue.

The tenant stated that she had thrown away “everything” due to their potentially being infested with bed bugs, including her dresser, dining table, TV stand, desks, pull out sofa bed, two armchairs, dining chairs, a backpack, king size bed frame and mattress, and everything that was fabric. She did not discard any of her clothes, which she testified she kept in zip lock bags. The tenant does not seek compensation from the landlord for the value of these discarded items.

In support of her assertion that bed bugs were present in the rental unit, she submitted two photographs of an insect on a paper towel. She testified that this photo was taken in the rental unit. She also submitted photographs of a stained carpet.

Additionally, she submitted a letter from a medical doctor dated March 8, 2022, which, in full, states:

[The tenant’s daughter] and her mother [the tenant] were seen in office on Feb 09th, 2022 for skin rashes and possible reaction to insects occupying their current place of residence.

The doctor does not opine on the cause of the rash or whether they have reacted to insects in the rental unit.

On March 13, 2022, the tenant took her daughter to an emergency room due to this issue. She submitted a note from the hospital which stated, in full:

[The tenant’s daughter] was seen in the ER with a large red spot on her upper arm.

The tenant also submitted several photos taken in February and March 2022 of her and her daughter’s face, arms, and legs, which show red spots on their skin. I am not a medical professional, and cannot determine the cause of these marks, but I can say that they do not appear to have been caused by scratches, that there does not appear to be any abrasion to the skin, and that each spot appear to emanate outwards from a central point on the skin.

The tenant submitted a letter dated March 2, 2022 from her outreach worker. In it, she wrote that since the tenant and her daughter moved into the rental unit that “have both begun to have allergic reactions and asthmatic reacts to the carpet” in the rental unit and have “developed rashes and what appear to be bug bites”.

The tenant testified that she was bitten as well, and as a result, she could not go to work and she lost her job. Additionally, due to the stress this situation caused her, she was unable to enroll in full time college classes which she was accepted for in January 2022.

b. Hot water

The tenant testified that within the first week of the tenancy she noticed that the water temperature would change approximately every 30 seconds from hot to cold and back to hot. This caused her daughter to burn herself on several occasions and on one occasion fell in the shower due to the surprise change in temperature. Her daughter took to showering at her grandparents. She submitted a video of her daughter refusing to take a shower, saying “that the shower is going to turn hot or cold” and that she was “scared” to take a shower.

The tenant testified that while this issue was stressful for her, it was especially stressful for her daughter.

The tenant testified that she advised SF of this verbally at least five times, and SF told her that she would change the faucets. The landlord did this, but the tenant testified that the issue remained.

On February 27, 2022, the tenant wrote a letter to the landlord stating:

The bathroom shower or water from the shower is not working a steady temperature. The water is changing temperature every three to five minutes too hot and cold period the shower temperature is never a normal temperature. It is impossible to take a normal shower. The water is too hot or too cold period the problem is like this since I moved in three months ago. I told the manager first she said that's how it is I have to get used to it. after one month they changed the shower. But since then it's the same problem period a request that this major problem is fixed, my 6 year old daughter does not want to take a shower, and is anxious when showering. She has burned her skin multiple times while showering.

The tenant testified that after she sent this letter, SF told her that the landlord had changed what they could, and that they think it is a problem with the central boiler. She stated that she is not sure if the landlord will fix it.

The tenant argued that the shower was “not suitable for living”.

c. Amount of tenant's claim

The tenant seeks \$30,000 in compensation for the loss of quiet enjoyment and emotional distress resulting from the landlord's failure to address the issue of the fluctuating hot water temperature and the pest infestation.

The tenant argued that these issues had significant impacts on her mental health. She stated that she was prescribed anti-depressant due to "psycho-social stressors". She stated that she was depressed because of the issues in the rental unit, the harm they were causing her daughter, the fear that she could not find a new apartment, and the fact that she was separated from her daughter. She testified that she was afraid she would become homeless as a result of these issues.

2. Tenant's father's evidence

The tenant's father attended the October hearing, and testified that when he visited the rental unit at the start of the tenancy, he noted that the building was in "poor" condition. It was "old fashioned" and had a black substance on the walls. He stated that the carpet was in poor condition and the bathroom shower was "very old". He testified that he did not have any first-hand knowledge about the hot water issue.

He testified that on one occasion, he and the tenant had to take his granddaughter to the emergency room as a result of insect bites she suffered in the rental unit, and that the attending doctor told them that they had to leave the rental unit "as soon as possible" due to the risk of the tenant's daughter getting "poison in her blood stream".

The tenant's father testified that these bites could have been from bed bugs, or could have been "something else". He speculated that the bugs could be in the carpets of the rental unit or that there could be other "unknown insects" which bit his granddaughter, or maybe a combination of the two.

He testified that due to the bug bites she was suffering from, the tenant's daughter moved in with him and his wife in March 2022, and remained there until the tenant vacated the rental unit in June 2022. He lives 25 minutes away by bus, and had to taxi or bus his granddaughter to and from school during this time, as they did not want to change her schools.

3. Landlord's evidence

a. Infestation

SF denied that the rental unit's carpets were dirty or infested prior to the start of the tenancy. The landlord provided a letter from the former building manager, who wrote that lived in the rental unit prior to the tenant moving in, and that it was not infested during her time there.

SF testified that she arranged for pest control to attend the rental unit four times during the course of the tenancy. She submitted a letter from the pest control contractor, which states:

New tenant inside the [rental unit], has been complaining about skin bites and bedbugs over many months, soon after the tenant moved inside the unit.

To address reported pest problem, inside a [rental unit] we have been providing more services. Here is list of services provided from January 2022 till end of April 2022.

- January 12 - Unit has been inspected for bugs and no any bed bugs found. Put a more insect monitoring glue boards in bedroom and inside a unit, to monitor any pests found for our next visit. Unit has been baited for roaches as a few roaches was reported inside a kitchen area. We have been suggesting tenant to check traps, vacuum areas, check and weekly wash bedding covers. If any bed bugs found, collected and immediately report to building manager.
- February 4 - The unit has been inspected, as monitoring glue boards. No any insect or bedbugs found inside a unit at this time.
- February 12 - Unit has been sprayed, after tenants reported bedbugs. No any bed bugs found inside a unit or other pests' problem.
- Mart 4 - baited unit for roaches an inspected unit for bed bugs, no any evidence of bugs inside the unit.
- April 27 - All unit has been sprayed for bugs or bedbugs. No any visible bedbugs found.

The above building has a regular pest control maintenance program over many years period all building areas and units are regularly inspected and if needed were treated for pest problems. Same unit has been occupied by old building manager and unit never had any bedbug problem.

As the unit has been sprayed an inspected for more times, as tenant never did found or collected bedbugs inside a unit, we have strong statement that the unit do not have any bedbugs problem at this time.

We suggest continuing with inspection of the unit and to do treatment only if needed.

[as written]

b. Hot water

SF testified that he called in a plumber to address the tenant's complaints about the hot water on December 18, 2021. The landlord submitted a letter from this plumber which stated:

[Rental unit] inspection on shower diverter requested by manager of the building and after tenants complaints that water is mixing, and water is not consistent.

Shower is running with no issues. We replaced cartridge and seal on all parts of the diverter and test diverter after. Mechanical parts are all functional and inverter works with no issues.

SF agreed that after this visit, the tenant continued to complain about the water temperature. She testified that she would then go up to the rental unit to show the tenant how to properly use the faucets. She denied that she ever told the tenant that there was a problem with the boiler, and that no other units in the building have similar issues.

Analysis

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:

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 "**Four-Part Test**")

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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 their case is on the person making the claim. In most circumstances this is the person making the application.

So, the tenant must prove it is more likely than not that the rental unit was infested and the hot water did not work properly, that the landlord failed to fix these issues, that the tenant suffered monetary loss as a result of this failure, and that she acted reasonably to minimize her loss.

Based on the information presented at the hearing, and the documents submitted into evidence, I find that the tenant has failed to discharge this onus.

Specifically, based on the letters from submitted into evidence by the landlord from the pest control contractor and from the plumber, I find that the tenant has failed to establish that the hot water did not work as it was supposed to or that the rental unit was infested by bed bugs or other insects.

The tenant has provided documentary evidence about the impact the alleged breaches had on her and her daughter (photographs of burns and bites, letters from doctor and support worker), but very little about the alleged deficiencies themselves. The only direct documentary evidence I have supporting the tenant's allegation that the rental unit was infested by bed bugs was a single photograph of an insect.

I have no documentary evidence showing the fluctuation of the water temperature (the faucet running with a thermometer, for example, or even with an individual's hand in the water describing the temperature).

The absence of such evidence weighed against the letters provided from contractors about the condition of the rental unit cause me to find that the tenant has failed to discharge her evidentiary burden to show that such deficiencies existed. I cannot say it is more likely than not that the tenant and her daughter suffered the bug bites as a result of an infestation in the rental unit as opposed to having been bitten at some other location. I cannot say it was more likely than not that the reason for the fluctuating water temperature was due to a deficiency with the building's boiler as opposed to the tenant not properly using the shower faucet.

As such, I dismiss the tenant's application for compensation for loss of quiet enjoyment and mental distress.

For similar reasons I dismiss the tenant's application for reimbursement of the cost renting a carpet cleaner and the labour associated with cleaning the carpet. I cannot conclude from the photographs submitted into evidence that the carpet was in a condition at the start of the tenancy that amounted to a breach of the Act. The photographs show a few small stains and paint drops, but do not support the tenant's assertion that the carpets were so dirty that the water in carpet cleaning machine was "black" after cleaning them. I find that the tenant has failed to discharge her evidentiary burden on this point as well.

As I have dismissed the tenant's application in its entirety, I decline to order that the landlord reimburse the tenant the cost of the filing fee.

Conclusion

I dismiss the tenant's application, in its entirety, 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: January 13, 2023

Residential Tenancy Branch