

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The hearing also dealt with the Tenant's Application for Dispute Resolution under the Act for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding

I find that both the Landlord and the Tenant were served by registered mail in accordance with section 89(1) of the Act. Both KN and SK acknowledged such service.

Preliminary Matters

In conformity with Policy Guideline 43 : Naming Parties, I have amended the application to indicate the personal representative, SK as the respondent for the estate.

Issues to be Decided

Is the Landlord or the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Tenant entitled to the return of the security deposit?

Is the either party entitled to recover the filing fee for this application from the other?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on January 1st, 2004, with a monthly rent of \$974.30, due on first day of the month, and with a security deposit in the amount of \$380.00.

The late Tenant, NK, passed away on May 15th, 2024. In August 2022, bed bugs were found in his rental unit. The Landlord hired exterminators, who eliminated the bed bug infestation at a cost in excess of \$10,000.00.

The Landlord charged NK a total of \$9,000.00 and allowed NK to pay the amount in \$250.00 monthly installments. By NK's death, he had paid a total of \$5,000.00. The Landlord claims for the remaining \$4,000.00, while the Estate claims for a repayment of the \$5,000.00.

JT testified that he has been building manager for three years as of November 2024 and hence was the building manager at the time the bedbug infestation was discovered and testified that the extent of the bedbugs in NK's unit led the exterminators to conclude that NK's unit was the origin point of the infestation. Two other adjoining units were also affected. JT testified that both the adjoining suites were occupied at the time of the infestation. JT also testified that there are 5 units on most floors, and the rental property consists of 11 storeys.

A report from the exterminators indicated that there was a severe infestation in NK's unit, and no living bedbugs in either of the adjoining units.

SK testified that his brother was an English professor at a local college. SK testified that NK had mobility difficulties due to his weight and an injury to his leg, and led a quiet, private life. Apart from shopping for groceries, he occasionally went to the movies with SK, attended church and had attended Bard on the Beach. SK testified that his brother was scared of being evicted. SK testified that his brother never left the lower mainland during the twenty years of his tenancy, and did not stay either with SK or other family. SK testified that NK was not in the habit of having guests, and SK had not seen his apartment since he helped NK move in.

SK testified that he asked a colleague of NK who shared an office whether he had had any bed bug problem, and was told he had not.

Analysis

Is the Landlord or the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, a party must prove:

- the other party has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the party acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Under section 34 of the Act, a Landlord is responsible for keeping the rental property in a state of decoration and repair that makes it suitable for occupation by a tenant. Policy Guideline 1: Landlord and Tenant – Responsibility for Residential Premises states that a landlord's responsibilities include insect control.

On the other hand, a tenant is responsible for damage caused by himself either through his act or negligence. Counsel for the landlord did not contend that NK would be liable to pay the costs under a contractual agreement, regardless of ultimate responsibility, and I do not find a contractual agreement on the facts before me. The Landlord stated that NK was responsible for the extermination costs; NK's acquiescence does not, in my view, create an acknowledgement of liability.

In short, if NK brought the bedbugs into the building, the estate will be liable for the extermination costs; if the bedbugs originated elsewhere in the building, the Landlord will be responsible.

A determination of the origin of the bedbugs is difficult: JT has only been building manager for three years, and NK has passed away. Although JT testified that the exterminators judged NK's unit to be the point of origin of the infestation, such is not indicated in the exterminator's report, which simply finds NK's unit to have been heavily infested, and – unlike neighbouring units – had live bedbugs.

There are a number of different possibilities for how the bedbugs came to infest NK's apartment:

- NK brought them with him at the outset of his tenancy;
- NK or a visitor brought them into the apartment during the tenancy, either on their persons, or through furniture or clothes – most likely used furniture – NK acquired during the tenancy.

- The bedbugs originated in one of the adjoining apartment units subject to the extermination efforts and spread to NK's apartment.
- The bedbugs originated elsewhere in the apartment building, and spread to NK's apartment, and then to the two adjoining apartment units.

This may not be exhaustive, but no other hypotheses were put forward, and I cannot think of any other possibilities that are not extremely remote.

The first possibility appears to me remote: although it is clear that NK lived with bedbugs for a significant time, it seems unlikely that an infestation would go unnoticed for nearly twenty years, nor spread to other units prior to the discovery of the infestation in 2022.

I see no reason to doubt the general thrust of SK's testimony regarding his brother's habits: that he was a private person, who did not travel and whose social life was minimal outside of his work, church, and visiting family. While we cannot exclude the possibility of other social life, the image of a quiet life is consistent with what that of the bookish professor with overflowing bookcases and mobility problems. While it is quite possible that either NK brought the bedbugs into the unit during the tenancy, NK seems substantially less likely to have done so than the average resident.

The remaining possibility is that the infestation arrived at NK's unit from some other unit in the building. It is generally the case that when tenants leave apartments, that mattresses and furniture are removed, and a thorough cleaning is performed, often including a steam cleaning of the carpet. It may well be that evidence of other infestations in the past would have been removed.

The extent of the infestation in NK's apartment suggests to me that it likely originated prior to JT becoming building manager in November 2021. There is no evidence as to whether infestations had been detected prior to that date.

Given the almost monastic nature of NK's life, I find that is unlikely that he was the source of the bedbug infestation. It appears more likely that it originated elsewhere in the rental property and spread to NK's apartment, where they multiplied. It may be that an infestation had been dealt with prior to JT's commencement as property manager, or that an infected tenant moved out, thoroughly cleaned the unit and that unit was not reinfested.

I therefore find, on a balance of probabilities, and considering the whole of the evidence, that NK was not responsible for the bed bug infestation and therefore not liable to cover the costs of extermination.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Tenant is entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$5,000.00.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the forwarding address was provided on September 25th, 2024, and the Landlord made their application previously on September 13th, I find that the Landlord made their application within the statutory period.

As I have not awarded the landlord a monetary order, I dismiss the Landlord's application to retain the Tenant's security deposit.

Therefore, I find the Tenant is entitled to a Monetary Order for the return their security deposit under sections 38 and 67 of the Act, in the amount of \$380.00, plus interest. The interest on the deposit I calculate in accordance with the Regulations to be \$31.71.

Is the either party entitled to recover the filing fee for this application from the other?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$5,511.71** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$5,000.00
authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	\$411.71
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$5,511.71

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

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: December 23, 2024

Residential Tenancy Branch