



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *MNDC, MNSD, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The tenant moved out prior to the end date of the fixed term tenancy. The landlord applied for a monetary order for liquidated damages and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The tenant applied for a monetary order for the return of her security deposit, the return of rent for August 2009, the filing fee and for the cost of furniture that she threw away due to the presence of bed bugs.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order to recover liquidated damages and the filing fee? Is the landlord liable for the cost of furniture that the tenant says she discarded due to the bed bug problem? Is the tenant entitled to the return of rent for August?

Background and Evidence

The tenancy started on June 01, 2009 for a fixed term of one year. The rent was \$690.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$345.00.

A clause in the tenancy agreement states that *“In the event that the tenant purports to terminate a fixed term tenancy before its expiry, the tenant shall pay to the landlord \$500.00 as a genuine pre-estimate of the damages suffered by the landlord including additional administrative costs associated with re-letting the premises”*

Tenant's Application

The tenant stated that she found a bed bug in her rental unit on August 05 and reported it to the landlord on August 07. The landlord was able to make arrangements for the unit to be fumigated that same day. The tenant stated that she stayed out of the unit for 48 hours and returned on August 09. That night, despite the treatment, the tenant got bitten by bed bugs.

The next morning (August 10), the landlord called the tenant to advise her that the pest control company had not found any bed bugs in her rental unit. The tenant responded by finding a bug, wrapping it in plastic and providing it to the landlord. The landlord made arrangements to have the unit fumigated on that same day. (August 10).

The tenant decided not to continue living in the rental unit and on August 10, 2009, she gave the landlord written notice to end the tenancy with an effective date of August 31, 2009. The tenant stated that she moved out immediately after she gave notice but moved her belongings out on August 29, 2009.

The tenant threw away her bed and box spring for fear of taking the bed bugs with her to the next unit. The tenant stated that her love seat has not been used since the move and she intends to discard it. Both these items are approximately three to four years old and were given to the tenant by family members. The tenant estimated the cost of these items by researching the internet. The tenant stated that she incurred additional expenses for laundry and medication to treat the bites.

The tenant has filed photographs of her bites and of the bed bugs that she captured, to show the landlord.

The tenant is claiming the following:

1.	Bed and Box Spring	\$650.00
2.	Love Seat	\$450.00
3.	Laundry	\$50.00
4.	Medication	\$50.00
5.	Rent for August	\$690.00
6.	Security Deposit	\$345.00
	Total	\$2235.00

Landlord's Application

The landlord stated that on August 07, 2009, the tenant complained about the presence of bed bugs in her unit and the landlord made arrangements to fumigate the unit. The landlord has an ongoing preventative maintenance program in place which is conducted by a commercial pest control company. The landlord filed evidence by way of invoices paid to the pest control company from January 2009 on.

The pest control personnel recommend that a unit remain vacant for 24 hours after fumigation and not 48 hours. The landlord stated that upon fumigation, they advise a tenant about what furniture is unsalvageable and needs to be discarded.

After the fumigation on August 07, the pest control staff advised the landlord that they had not found any bug activity in the unit. However, on August 10, the tenant reported the presence of bugs again and also provided a sample to the landlord. The landlord had the unit fumigated on that same day.

The landlord acknowledged that he had received a notice to end tenancy on August 10, and that the tenant moved her belongings out on August 29. The landlord advertised the availability of the unit and the unit was re-rented on September 01.

The landlord testified that the tenant was not asked by the pest control staff, to discard her bed and love seat and therefore he was not liable for the cost of these items. The landlord is claiming \$500.00 for liquidated damages due to the tenant ending the fixed term lease prior to the end date and \$50.00 for the filing fee. The landlord has also applied to retain the security deposit in partial satisfaction of his claim.

Analysis

Tenant's application:

Furniture:

The pest control personnel did not indicate to the tenant that her furniture was infested and needed to be discarded. The tenant chose to do so herself. In addition the tenant did not discard the love seat but is claiming \$450.00 towards the cost of the item. The tenant has not filed any evidence to indicate that she discarded these items nor did she file any evidence regarding the value of these items. Therefore, I find that the tenant is not entitled her claim of \$1,100 for the replacement of the furniture that she says she discarded.

Laundry and medication:

The tenant did not file any evidence to support her claim. Therefore I find that the tenant is not entitled to her claim of \$100.00 for laundry and medication.

Rent for August:

The tenant did not give the landlord adequate notice to end the tenancy nor did she move her belongings out of the unit until the end of August. Therefore the tenant must pay rent for the month of August and accordingly her claim for reimbursement of rent is dismissed.

Security Deposit:

The tenant handed over the rental unit in good condition and therefore is entitled to the return of her security deposit.

Landlord's application:

Liquidated Damages:

The tenant entered into a fixed term tenancy agreement and by signing the tenancy agreement, she agreed to pay \$500.00 to the landlord in the event that she ended the tenancy prior to the end date. Even though the tenant states that she was forced to move out due to the presence of bed bugs, the tenant has failed to prove that the landlord was negligent in addressing the problem. Therefore I find that the tenant chose to end the tenancy and must pay damages for breaking the fixed term lease.

Filing fees (both parties):

Based on the sworn verbal testimony and documentary evidence filed by the both parties, I find that the tenant has not proven her case and therefore is not entitled to the filing fee. The landlord has established a claim of \$500.00 towards liquidated damages and since he has proven his case, he is entitled to the filing fee.

Overall the landlord has established a claim for \$550.00. I order that the landlord retain the security deposit of \$345.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$205.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$205.00**

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: December 04, 2009.

Dispute Resolution Officer