



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord – MNSD, MNDC, FF

For the tenant – MNDC, MNSD

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The landlord seeks an a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulation or tenancy agreement, to keep the security deposit and to recover the filing fee. The tenant has requested a Monetary Order for money owed or compensation for damage or loss under the Residential tenancy Act (Act), regulation or tenancy agreement and to recover the security deposit.

Both Parties served the other with a copy of the Application and Notice of Hearing by registered mail. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to money owed or compensation for damage or loss under the *Act* and if so how much?
- Is the landlord entitled to keep all or part of the security deposit?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

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- Is the tenant entitled to money owed or compensation for damage or loss under the *Act* and if so how much?
- Is the tenant entitled to recover the security deposit?

Background and Evidence

This month to month tenancy started on September 06, 2009 and ended on September 17, 2009. The tenant paid a monthly rent of \$550.00 which was due on the 1st of the month. The tenant paid a security deposit of \$275.00 on August 26, 2009. The tenant gave the landlord his forwarding address in writing on September 28, 2009.

The landlord testifies that the tenant did not give one month's written notice to end the tenancy. The tenant gave the landlord written notice to end the tenancy due to finding bugs in his unit and burns on the carpet on September 09, 2009 and again on September 16, 2009. The tenant sent another letter to the landlord to reconfirm the notice letters sent and once again giving the reasons to end the tenancy as a bed bug infestation. The tenant moved from the rental unit on September 17, 2009 and the landlord seeks a loss of revenue for October, 2009 in compensation for money owed by the tenant due to no proper notice having been given by him to end the tenancy. The landlord seeks to retain the tenants' security deposit of \$275.00 to offset against the loss of revenue owed and seek a Monetary Order for the balance of \$275.00.

The tenant testifies that when he viewed the rental unit on August 24, 2009 he was appalled at the condition it was in. The building manager showed him around the unit and told him that it would be in tip top condition before he moved in. The tenant moved in on September 06, 2009 and within a couple of days he noticed bites on his leg and hand. On September 09, 2009 he mentioned these bites to the building manager and suggested to her that there were bugs in his unit. The tenant testifies that she said she would get hold of the property manager. The tenant claims that he experienced more bites on his body area and again approached the building manager who told him she had not heard back from the property manager yet. The tenant then phoned the property manager himself and asked him what could be done about the bites. The tenant claims he also spoke to another tenant and asked her if she had experienced any

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problems with bugs. This tenant told the tenant that she had been experiencing them for about one and half months.

The tenant claims he discovered that there were bugs in other areas of the complex. He went to the hospital to get the bites checked and was told by the doctor that they did look like insect bites and he suggested the tenant moved out of the rental unit. The tenant contacted the property manager and states that he was disturbed by his tone and the way management handled the situation.

The tenant claims that if he had been made aware of the bed bug situation in the complex he would never have moved into the rental unit. The tenant has produced photographic evidence from another tenants unit showing bedbugs in tissue paper and down the toilet. These photographs also show four mouse traps and a dead mouse. The tenant states he did not take photographs of the bugs in his unit as he did not think about it at the time.

The tenant testifies that on September 15, 2009 he again spoke to the property manager who said he had someone in the building working on the bug problem and would send him to his unit to fumigate it. The tenant moved from the building after medical advice. The tenant has produced medical notes showing his treatment for insect bites, a letter from the environmental health officer concerning various complaints from other tenants living in the building about bedbugs and a support letter from his MLA regarding his awareness of bedbugs in the building and other tenants moving out because of this. The tenant has also produced a letter from another tenant residing in the building which states there is no doubt that the complex has a bedbug problem.

The tenant is claiming compensation for his prescription costs to treat the bites of \$21.76, a fee for his change of address with the post office at \$40.95, a moving fee of \$308.00, fee for service of hearing documents of \$8.44, laundry costs to clean his belongings due to bedbugs at \$29.00, replacement of his box spring due to bedbugs found within it at \$112.00, replacement of his vacuum cleaner which he discarded due to vacuuming up bedbugs at \$50.00. The tenant also seeks the return of his security deposit.

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The landlord disputes the tenants claim that his unit had a bedbug infestation. The property manager claims that they did their due diligence before, during and after the tenancy to ensure there were no bedbugs in this unit. The landlord has produced a letter from a pest control company which states that they performed K9 inspection on August 12, 2009 that indicated no activity with bugs in the tenants' suite. This letter goes on to say that the management wanted to give the tenant residing in the unit some peace of mind so they carried out a basic treatment for bedbugs on September 15, 2009 and again found no activity in the unit. Another follow up K9 inspection took place on September 29, 2009 that once again indicated no bedbug activity. This letter also states that they found no bedbug activity in any of the surrounding suites.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regards to the tenants claim that he had bedbugs in his rental unit and was not informed of this problem in his unit or the building prior to moving in. I find the tenant was forced to move out due to this problem incurring additional costs with moving expenses and change of address fees. The tenant argues that if he had known that there were bedbugs in his unit prior to moving in he would never have rented the unit. The tenants' evidence does indicate that he has been bitten by bedbugs and has had to seek medical treatment due to these bites.

The move in condition inspection clearly indicates that there were bedbugs in the tenants unit after he moved in as this inspection was not conducted until September 13, 2009. As these bugs were noted on the inspection report by the building manager I find that she was aware at that time that there was a problem with bugs in the unit. The building manager argues that she did not actually see the bugs at that time however; I find it unlikely she would have documented it solely on the word of the tenant without further investigation on her part. Therefore, I find the building manager was remiss in her dealings with this issue and did not take appropriate steps at the time to eradicate the problem or inform the property manager. It is the landlords' responsibility to ensure a tenant is informed of any issues relating to his tenancy before the tenancy commences. Consequently I find that the landlord did not disclose to the tenant that there was an issue with bedbugs in the building and therefore give the tenant opportunity to make a fully informed decision whether or not to rent the unit.

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I find that although the management team has provided a letter from the pest control company stating that an inspection took place of the unit before, during and after the tenancy to deal with these issues and put the tenants mind at rest. This letter states that the pest control company found no evidence of bedbugs in the tenants unit. With this in mind, if the tenants' evidence is contradicted by the landlords' evidence, the tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In this instance I find that the tenant has provided sufficient corroborating evidence to show that the tenant has incurred insect bites and did have bedbugs in his rental unit as shown on the move in condition inspection report filled in by the building manager. I also find the tenant has produced evidence that the building has had an infestation of bedbugs and the tenant has been bitten as a result of this. His documentary evidence supports his testimony of an infestation with medical notes, environmental health officer letter and a letter from the MLA concerning bedbugs in the building. Consequently, I find that the landlord did not inform the tenant of the bedbug problem in the building prior to his tenancy commencing and did not take immediate steps to eradicate the bugs after the move in condition inspection was completed. Therefore, due to the landlord not disclosing this information to the tenant, the tenant was at liberty to end the tenancy without proper notice.

Due to the above I find the landlords application for a loss of revenue and to retain the tenants security deposit is dismissed without leave to reapply.

As the tenant has incurred additional costs due to the issues with the bedbugs and having to find alternative accommodation I find he is entitled to recover these costs. I also find the tenant incurred costs for his laundry to ensure any bedbugs present were eradicated and had to replace his box spring and vacuum cleaner due to bedbugs being present. I further find the tenant incurred medical costs for his prescription for cream for the bites on his body.

The tenant has applied for the return of his security deposit. As he gave the landlord his forwarding address in writing on September 21, 2009 the landlord had 15 days to either return the tenants' security deposit or apply to keep it. The landlord did apply to keep this on October 02, 2009 within the 15 days allowed. However, as the landlord has not been successful with their application the tenant is entitled to recover double his security deposit from the landlord

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pursuant to section 38(6)(b) of the Act. A Monetary Order has been issued to the tenant for the following amount:

Prescription costs	\$21.76
Moving costs	\$308.00
Service of hearing documents to landlord	\$8.44
Laundry costs	\$29.00
Replace box spring bed	\$112.00
Replace vacuum cleaner	\$50.00
Return of double his security deposit	\$550.00
Total amount due to the tenant	\$1120.15

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,120.15**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that 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 *Residential Tenancy Act*.

Dated: January 26, 2010.

Dispute Resolution Officer