

DECISION

Dispute Codes:

MNSD; O; FF

Introduction

This is the Tenant's application for return of July's rent; for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

Tenant's agent's testimony:

The tenancy started on July 1, 2009 and was a fixed term tenancy, ending June 30, 2010. The monthly rent was \$990.00. The Tenant paid a security deposit in the amount of \$495.00 on July 1, 2009. A copy of the tenancy agreement was entered in evidence.

The Tenant viewed the rental unit while the previous tenant was still living there. The previous tenant's belongings were still in the rental unit and it appeared to be in reasonably good condition for an older building. The Tenant was out of town on July 1, 2009, and started to move into the rental unit on July 4, 2009. The Tenant immediately discovered there were hundreds of tiny bugs in the kitchen and living room. The rental unit had not been cleaned, the fridge was in disrepair and the blinds did not work. The Landlord did not attend to perform a move-in inspection.

The Tenant turned the taps on in the kitchen and the counter came alive with tiny bugs. The Tenant did not unpack her belongings and called the Building Manager about the bugs. The Manager was away on holidays and the Manager's agent was not able to deal with the matter. A week later, the Manager returned from holidays and sent the

handyman to the Tenant's home to investigate the problem. An exterminator was called, but did not come to the rental unit for several days. The exterminator fumigated the rental unit and advised the Tenant not to return for 72 hours because of the chemical residue.

The Tenant did not stay in the rental unit, did not unpack her belongings for fear of contamination by the bugs, and did not set up normal cable and internet services. She took her cat and moved to her parents' house. Her parents live some distance from the rental unit and the Tenant's place of work. There is no public transportation near her parents that would allow her to get to work and back during her working hours, and therefore the Tenant did not work for the month of July.

The Tenant returned to the rental unit after 72 hours of the extermination and the bugs were still there. They were tiny, but could be observed. If a person pounded on the kitchen counter, they would scurry out from under the counter. The Tenant's agent visited her at the rental unit for a couple of hours, and stated that he was overcome with bugs on his skin.

The Tenant never unpacked, or lived, in the rental unit and removed all of her belongings on July 28, 2009. There was no move-out inspection done when the Tenant moved out. The Landlord initially agreed that the Tenant could terminate the tenancy without penalty, but later reneged. The Tenant provided copies of e-mails in evidence. On July 20, 2009, the Landlord stated that the Tenant could terminate the lease without penalty if she moved out prior to the end of the month. The Landlord further offered to return the Tenants' security deposit if there were no damages.

The Tenant did not agree that the Landlord could keep the security deposit, but the Landlord has not returned it. The Tenant provided her forwarding address via e-mail, as well as fax at 11:37 on August 6, 2009. The Tenant's agent quoted the fax confirmation number of 027021.

Landlord's agent's testimony:

The Manager is currently away on holidays and the Landlord's agent is not certain about some of the issues. For example, the Landlord's agent was certain that the Manager offered the Tenant opportunities for a move-in inspection, as it was the Manager's practice to do so, but she did not have any direct knowledge that this had been done. The Landlord's agent stated that there had been a move-out inspection with the previous tenant, but there was no Condition Inspection Report entered in evidence.

The rental unit is in an older building. The Manager has contracted for an exterminator to spray the building every 2 months.

The bugs were very small and no other tenants have complained. The Landlord's agent believes the bugs were there due to the warm weather, and stated that sometimes it takes a couple of weeks for the spray to do its work.

The Tenant did not provide the Landlord with her written notice to end the tenancy, and simply moved out at the end of July. The Landlord's agent stated that the Landlord was unable to re-rent the rental unit for August.

Analysis

This is the Tenant's application. The Landlord has not filed an application with respect to any claim for damages it may have with respect to this tenancy.

With respect to the Tenant's application for return of July's rent, in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists;
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement;

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage; and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the Applicant, that being the Tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the Respondent Landlord. Once that has been established, the Tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the Tenant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I accept the undisputed testimony of the Tenant's agent that the rental unit was overcome with tiny bugs when the Tenant took possession of the unit. I accept the Tenant's agent's testimony that the Landlord, or its Manager, did not perform a move-in inspection, which may have disclosed the bug infestation. There was no evidence of a move-out inspection being performed with the previous tenant, which may have disclosed the bug infestation. I accept the undisputed testimony of the Tenant's agent that the Tenant did not live in the rental unit, or unpack her belongings. I find that the Tenant attempted to mitigate her, and her Landlord's loss, by:

- Immediately attempting to contact the Manager when she discovered the bugs on July 4, 2009;
- Promptly advising the Manager when it became apparent that the fumigation did not eradicate the bugs; and
- Attempting to negotiate the termination of the lease in time for the Landlord to re-rent the rental unit for August 1, 2009.

Section 32 of the Act provides that the Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law; and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the Tenant. I find that the Landlord did not comply with Section 32 of the Act.

The Tenant called the Manager when she became aware of the bugs on July 4, 2009. The Manager's agent did not have the authority to deal with the problem, so there was a delay in the exterminator being called. The suite was not ready for habitation until July 18 (72 hours after the exterminator had finished his work). The Tenant's agent testified that the bugs were still there, but the Landlord was at that point attempting to rectify the situation.

I find that the Tenant is entitled to recover partial rent for the month of July, from July 4, 2009 to and including July 18, 2009, in the amount of \$479.03 (\$990.00 / 31 x 15 days). I further find that there were sufficient violations of the Act on the part of the Landlord to terminate the tenancy.

With respect to the Tenant's application against the security deposit, a security deposit is not the property of the Landlord. It is held in trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Tenant's agent testified that the Tenant provided the Landlord with written notification of her forwarding address on August 6, 2009. The Tenant did not provide documentary evidence to support this. However, I find that the Landlord received the Tenant's forwarding address in writing when the Landlord was served with the Notice of Hearing Documents, including the Application for Dispute Resolution claiming against the security deposit. The Landlord did not return the security deposit within 15 days of receipt of the Notice of Hearing Documents, nor did the Landlord file for dispute resolution against the security deposit. Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, I find that the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$990.00. No interest has accrued on the security deposit.

The Tenant has been successful in her application and is entitled to recover the cost of the filing fee from the Landlord.

The Tenant has established a monetary claim, as follows:

Partial recovery of July's rent	\$479.03
Double the security deposit	\$995.00
Recovery of the cost of the filing fee	<u>\$50.00</u>
Total monetary award	\$1,524.03

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$1,524.03. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced 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 7, 2010
