

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenants for a monetary order. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order?

Are the tenants entitled to a monetary order?

### Background and Evidence

The parties agreed that the tenancy began on October 1, 2009 and was set to continue for a fixed term of 9 months, ending on June 30, 2010. The tenants paid a \$425.00 security deposit at the outset of the tenancy and rent was set at \$850.00 per month.

The landlord testified that the tenants who had previously resided in the rental unit until September 28, 2009 had advised on the last day of their tenancy that they had abandoned items in the rental unit due to a bedbug infestation which they had discovered only a week before. The landlord removed the items from the unit and hired Y.A., a pest control technician, to inspect and treat the rental unit. Y.A. participated in the hearing and testified that he attended the unit on September 30 and inspected the unit but found no trace of bedbugs. Y.A. testified that during the inspection he looked for live bugs, skins which had been discarded and fecal matter and that his search was conducted throughout the unit, including around baseboards, in closets, under baseboard heaters, on the carpets and on the floors. At the request of the landlord who wished to exercise an abundance of caution, Y.A. sprayed the unit with Tempo, the

strongest pesticide permissible, which he testified was effective to kill bedbugs and eggs on contact. Y.A. further testified that Tempo provided a chemical barrier which would kill any bedbugs with which the chemical had not initially directly contacted if the bugs attempted to cross that barrier.

The tenants testified that they moved into the rental unit on October 1. Most of the furniture used by the tenants was obtained from a relative, who had kept the furniture stored on her property. On October 4 the tenant J.M. awoke to discover what appeared to be several bites on her shoulder blade. The tenants further testified that on the following day they found a bedbug under a pillow on the bed. J.M. experienced numerous bites over the course of the following days. The tenants advised the landlord on or about October 6 that they had discovered a bedbug and asked the landlord to have the rental unit treated. Y.A. testified that he attended the rental unit on October 8 and again inspected the unit, including the tenants' furniture, for signs of bedbugs but found no indication that bedbugs were present. Again, at the urging of the landlord Y.A. sprayed the rental unit with Tempo. The tenants testified that they discarded their mattress and purchased a new one on October 10. The tenants stated that they observed another bug in the unit on October 11 and that on October 12, when J.M. awoke to discover some 20 new bites, the tenants removed all of their laundry from the unit and washed everything in an effort to rid themselves of the bugs. The tenants did not return to the rental unit, although their belongings stayed therein for a further 11 days. The tenants testified that on October 18 they completely emptied the rental unit and asked the landlord to sign a mutual agreement to end tenancy, but he declined to do so. On October 23 the tenants served the landlord with a notice advising that they were ending their tenancy immediately due to the bedbug infestation and their concern with the landlord entering the unit without having given proper notice.

The landlord testified that as a result of the tenants having broken the lease agreement and ended the tenancy early, he lost rent for the month of November as he was unable to re-rent the unit until December 1 and he incurred expense advertising the unit. The landlord further testified that the tenants left a number of items outside the communal garbage bin which he had to pay \$84.00 to remove. The landlord further testified that

the tenants failed to return keys to the rental unit and to the mailbox and that he incurred expense in rekeying those locks. The landlord also originally claimed to recover the cost of two treatments for bedbugs, but at the hearing indicated that he was reducing his claim to recovery of one treatment. The landlord took the position that there was never any evidence of bedbugs and that he treated the rental unit due to the tenants having made false complaints about bedbugs.

The tenants acknowledged that they did not return the keys to the rental unit and mailbox and testified that they were waiting to return the keys until the landlord contacted them to schedule a condition inspection report, which he failed to do. The tenants denied having left garbage outside the residential premises.

The tenants seek to recover the losses resulting from the bedbug infestation, which include allergy creams, replacement of their mattress and boxspring, replacement of their vacuum cleaner which they claimed was ruined by the powders they used to treat the carpets, the cost of mattress covers, the cost of moving and their loss of earnings for the day they spent moving. The tenants also seek the return of double their security deposit.

Both parties seek to recover the filing fees paid to bring their applications.

### Analysis

There is no dispute that the parties were in a fixed term tenancy agreement which was set to continue until June 2010. In order to establish that they had the right to end the tenancy before the expiry of the fixed term, the tenants bear the burden of proving that the landlord breached a material term of the tenancy agreement. In order to establish their claim for the losses that resulted from that breach, the tenants must prove that the breach occurred. The standard of proof is the balance of probabilities, which means that the tenants must have more evidence in their favour than the landlord, even by the smallest degree. After having carefully reviewed all of the testimony and evidence, I have concluded that the tenants have failed to prove their claim on the balance of probabilities. I have arrived at this conclusion for the following reasons. Although the

tenants claimed that there was a bedbug infestation, Y.A., who I accept is a certified professional in his trade, inspected the tenants' furniture and the rental unit on two occasions during their tenancy and failed to find any trace of bedbugs. The tenants found bugs which they identified as bedbugs, but in the absence of independent verification it is impossible to determine that they were bedbugs rather than some other, more innocuous bug. I accept that the tenant J.A. had numerous bites, but these have not been confirmed by a medical professional as bedbug bites and I find it entirely possible that some other type of insect could have bitten her. The tenants provided photographs of marks on the bottom of the walls of the bedroom which they claim is bed bug fecal matter. However, Y.A. inspected the rental unit on three occasions, once prior to the tenancy and twice during the tenancy, and found no trace of fecal matter although he specifically looked for it. While there are clearly marks on the walls, I am not convinced that the marks were produced by bedbug activity, particularly as those marks would likely have been on the walls at the time the unit was inspected by Y.A.. The tenants urged me to consider that the landlord must have known there was bedbug activity because he arranged for Y.A. to treat the unit. I disagree. A prudent landlord when faced with a complaint of an infestation will treat the unit which is the subject of the complaint as a precaution because he knows that failing to address a complaint could expose him to liability. I find that the landlord acted appropriately in the circumstances. I recognize that it is unusual that the tenants would have suffered from insect bites in a rental unit in which there had been a previous complaint of bedbugs, but I am unable to reconcile this with the report of Y.A., who testified that he at no time found any indication of bedbugs. Had Y.A. stated that he found evidence of bedbugs when he was in the rental unit on September 30, he could have billed for further follow-up treatments. It was not in his best interest to note that there were no bugs and at that point, before this tenancy began, there would have been no anticipation of a conflict between the landlord and the tenants who were yet to move in. I must further note that when the tenants made complaints to the landlord, he acted quickly to ensure that the unit was treated despite his belief that there was not a problem. I have no doubt that the landlord said things to the tenants which exacerbated their frustration, particularly having observed his rude and abusive behaviour toward the tenants during the hearing,

but this does not found the damage claim made by the tenants. I am unable to find that the landlord was negligent in any way and I find that the landlord did not breach a material term of the tenancy. Therefore, I find that the tenants did not have the right to end the tenancy prior to the fixed term. I find that the tenants' claim for damages, which is all based on the landlord's alleged breach of a material term, must be dismissed. The tenants are not entitled to an award of double their security deposit as the landlord complied with his obligation under the Act and made an application to retain the deposit within 15 days of receiving the tenants' forwarding address.

I find that the landlord made an effort to mitigate his losses by advertising the rental unit in a timely manner and is entitled to recover advertising costs. I award the landlord \$189.01. I find the landlord is entitled to recover loss of income for the month of November and I award the landlord \$850.00. I find that the landlord has not proven that the items left by the communal garbage bin belonged to the tenants and I dismiss that claim. I find that the tenants failed to return the keys to the landlord, which they should have done in order to surrender possession of the unit, and find that the landlord had to replace the door and mailbox locks as a result. I award the landlord \$106.44. The rental unit was treated for bedbugs twice during the tenancy and I am not persuaded that treatment was necessary as no evidence of bedbugs was found. There was no charge for the treatment on October 8. The landlord paid \$52.50 for the treatment on October 14 and I find he is entitled to recover that sum. I award the landlord \$52.50. I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring his application and I award the landlord \$50.00.

## Conclusion

In summary, the tenants' claim is dismissed in its entirety. The landlord has been successful in the following claims:

Advertising costs	\$ 189.01
Loss of income for November	\$ 850.00
Re-keying locks	\$ 106.44
Bedbug treatment	\$ 52.50
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$1,247.95</b>

I order that the landlord retain the \$425.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$822.95. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: March 04, 2010

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