

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant. In summary, the landlord seeks compensation for loss of revenue, and the tenant seeks compensation due to a bed bug infestation in the rental unit, plus return of their security deposit.

The landlord applied for dispute resolution on January 12, 2010 for;

- A Monetary Order to recover loss of rental revenues for January 2010
- To retain the security deposit in partial satisfaction of the claim

The tenant applied for dispute resolution on January 18, 2010 for:

- Return of the security deposit plus interest in the amount of \$395 and any applicable compensation under section 38 of the Residential Tenancy Act (the Act).
- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement for replacement of:
 - Bed mattress, bed box spring, futon, recliner, mattress pad, dining table, dining chairs, bed frame, storage costs and laundry costs, and an *administration fee* totalling, \$2485.59

Both parties claim recovery of the filing fee associated with their application in the amount of \$50.

Both parties attended the conference call hearing and participated with their submissions, affirmed / sworn testimony and documentary evidence, and were permitted to ask questions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue?

Is the tenant entitled to the monetary amounts claimed for furniture replacement, storage unit, and laundry?

Is the tenant entitled to the return of the security deposit, and double the original deposit under Section 38 of the Act?

Background and Evidence

The following is not disputed by the parties. The tenancy began on February 02, 2008 and ended December 31, 2009 when the tenant vacated. At the outset of the tenancy the landlord collected a security deposit of \$395 which the landlord still holds. There were no start of tenancy, or end of tenancy inspections conducted or recorded by the parties.

The landlord's claim

Landlord testified the tenant gave verbal notice to vacate on December 17, 2009 that they were vacating at the end of the same month. The landlord asserts that since the tenant did not provide written notice to vacate according to the Act, the tenant is liable for lost rent revenue for the month following in the amount of \$790.

The tenant testified the landlord told them, through the building manager, that under their circumstances they did not need to provide the landlord with written notice to vacate. The building manager testified the landlord told him that written notice to vacate from this tenant would not be required. The landlord himself testified that he told the building manager the tenant would not be required to provide the usual written notice to vacate. The landlord further testified that what he had also told the building manager was that this waiver of a written notice was conditional on the tenant vacating, "immediately". The tenant denies being told to vacate immediately, and continued to prepare to vacate at month's end.

The tenant's claim

The tenant testified that in the first week of December 2009 they informed the landlord of bed bugs in their rental unit. The landlord quickly inspected the rental unit along with their building manager and determined to begin treatment the following day, and told the tenant that the landlord would reimburse the tenant for additional laundry the tenant would incur due to the treatment requirements for the bed bugs, provided they did the laundry in the building laundry facilities. During the treatment period the tenant stayed

with a family member and six (6) days later the tenant returned to the rental unit on December 13, 2009, with the knowledge that there was to be 2 follow up treatments commencing on December 26. The tenant testified that when they returned to the rental unit the bed bugs were still active and the tenant was bitten. The tenant determined to temporarily relocate with family and on December 17, 2009 the tenant told the building manager they would vacate at month's end.

The tenant testified that they began cleaning the rental unit according to the requirements to vacate, given to them by the landlord, and further proceeded to use the building laundry facilities to launder and dry all their washables, so as they would not infest their new future accommodations. The tenant claims they incurred a total combination of 158 washer and drier loads (@ \$1.50 per load) for a total of \$237. The landlord refused to reimburse the tenant, as promised. The landlord testified that in their determination, 20 washer loads (or 40 combined loads) would have been reasonable.

The tenant testified they determined to discard much of their furniture because of the bed bugs infestation, and claim a total of \$2485.59 for its replacement. The tenant provided paid invoices for the replacement furniture of their choice dated January 08 and 09, 2010, totalling their monetary claim. The landlord strongly disputed the tenant's claim – stating the tenant chose to needlessly discard their furniture and then chose to replace it – all at their discretion, and that the furniture would have been treated as part of the pest control measures.

The tenant also testified they rented a storage unit to which they moved their belongings at month's end at a cost of \$101.18, and feel the landlord should pay for it as it was used to store furniture prior to moving to new accommodations because of the bed bugs infestation.

In respect to the bed bugs issue, the landlord testified that the tenant's unit was the only unit in the residential apartment property with bed bugs, before, during, and since the tenant's occupation. The landlord provided an abundance of periodic pest control inspection documents from their contractor, to support their claim that the landlord has measures in place and is responsive and committed to ensuring clean and sanitary conditions for all their tenants.

At the end of the tenancy, the tenant provided the landlord with a forwarding address in writing on January 11, 2010, requesting the return of the security deposit.

Analysis

On the preponderance of the evidence and all submissions to both claims and all testimony given in the hearing, I have reached a decision. I have carefully considered all the evidence, including the affirmed evidence of both parties.

As to the landlord's claim:

The evidence is that the landlord expressly waived their right to written notice to vacate from the tenant. The tenant acted on the landlord's waiver and went about preparations to vacate by month's end. I find that in this matter, if the landlord waived their right to a written notice as required by the Act, the tenant is justified in thinking there will not be an onus on them to compensate the landlord for lack of 'proper' notice. Also, the Act does not provide for an automatic penalty in the event a tenant does not provide legal notice to vacate. Rather, the landlord may apply for compensation if the tenant, by contravening the Act, causes a loss for the landlord. In this matter the burden of proof is on the landlord to show the tenant was directly responsible for their loss of revenue for January 2010. I find the landlord has not met this burden. Therefore, **I dismiss** the landlord's claim for loss of revenue for the month of January 2010, without leave to reapply, effectively **dismissing the landlord's application**.

As to the tenant's claim:

In order to justify payment of damages under sections 67 of the *Act*, the tenant would be required to prove that the landlord did not comply with the *Act* and that their non-compliance resulted in costs or loss to the Applicant pursuant to section 7. It is important to note that in a claim as this for damage or loss under the *Act*, the party claiming the damage or loss(in this case the tenants), bears the burden of proof and the evidence furnished by the tenants must satisfy each component of the following test:

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 loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the tenants right to claim damages from the landlord, **Section 7** of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The tenants have claimed for loss of their personal belongings namely, a bed mattress, bed box spring, futon, recliner ,mattress pad, dining table, dining chairs, bed frame, as well as storage costs and an *administration fee* – and testified they hold the landlord responsible for their loss.

I have considered all of the evidence and testimony and find that the landlord attempted to eradicate the bed bug infestation almost immediately after being notified -employing the services of their pest control contractor. I find the initial treatment was mildly delayed at the request of the contractor, but accomplished within a period of 6 days and the landlord had plans to perform follow up treatment in the coming 2 weeks. I find the landlord also offered to reimburse the tenant for laundry costs. The evidence also shows the landlord was agreeable to waiving the requirement of written notice to vacate when the tenant determined to end the tenancy on short notice. I find the tenant discarding their belongings, may not have been in the extreme; but most importantly, I find that the tenant's resulting loss was not due to the actions or neglect of the landlord in violation of the *Act* or agreement. As a result, **I dismiss** the tenant's claim of the cost for furniture replacement *and* of costs for a storage unit, without leave to reapply.

The evidence is that the landlord promised to reimburse the tenant for laundry costs and the tenant acted on the landlord's instructions. I prefer the landlord's evidence that the promise of reimbursement was for "reasonable costs". I do not find the tenant's claim of \$237 reasonable. I find the tenant is entitled to reimbursement of laundry costs which I set in the amount of **\$75**, without leave to reapply.

As I have dismissed the landlord's application it is appropriate that I return the original security deposit to the tenant in the amount of \$395, plus accrued interest of \$5.41 for a total of **\$400.41**. Any remaining item of the tenant's claim **is dismissed**, without leave to reapply.

As the tenant was partially successful in their application I grant the tenant partial recovery of their filing fee in the amount of **\$25**, for total award to the tenant in the amount of **\$500.41**.

Conclusion

The landlord's application is **dismissed**, without leave to reapply. The tenant is found partially successful in their claim, without leave to reapply.

The tenant is given a **Monetary Order** under Section 67 of the Act for the amount of **\$500.41**. If necessary, this order may be filed in the Small Claims Court 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*.