



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant and an application by the landlord.

The tenant's Application for Dispute Resolution is dated June 10, 2010, in which the tenant has made application for compensation for damages and loss of personal property in the amount of \$2972.71. The tenant also claims the return of their security deposit.

The landlord applied on June 10, 2010 for unpaid rent in the amount of \$380.00 and to retain the security deposit in partial satisfaction of their claim, as well as recovery of the filing fee for this application.

Both parties were present at the hearing. At the start of the hearing the hearing process was explained. They were provided with the opportunity to submit documentary relevant evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony, to ask each other questions and to make submissions and present witnesses during the hearing. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary Matters

The landlord claims they forwarded a package of seven (7) pages of evidence on October 01, 2010 by registered mail to the address the tenant had provided as a forwarding address. The landlord provided a tracking number. The landlord testified that the item had been returned as the tenant had not been located at the address provided. The tenant explained that she had recently moved and had mail forwarding in place.

Section 88 and 90 of the Act states that a landlord may send documents to a tenant to a forwarding address provided by the tenant and that the tenant is deemed to have

received such documents on the 5th day after mailing. I find the landlord conducted themselves properly in respect to providing the tenant evidence; however, as the Residential Tenancy Branch has also not received this package, I find that the contents of this package are not admissible. The landlord was given opportunity to verbally testify in the hearing, as to the contents.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$2972.71 in damages and loss of personal property?

Is the tenant entitled to the return of their security deposit?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

As well as their security deposit, the tenant has claimed compensation for the loss of personal belongings which they claim they had to discard, as well as for a quantum of storage fees for the balance of their belongings. Their claim includes the following:

Bed frame	189.00
Mattress	899.00
Wooden slats for bed	170.00
Wardrobe – multiple parts	274.00
Pillows - 2	26.00
Bath towels	20.00
Bedding	18.00
Hangers	12.00
Storage bins	85.00
Storage fees for 5 months	575.00
Security deposit + interest	380.26
Total	2648.26

The undisputed testimony in this matter is as follows: The tenancy began December 15, 2008 and ended when the tenant vacated on May 20, 2010. The tenant returned her keys and attended a unit inspection on May 31, 2010. Rent was \$758 per month. At the outset of the tenancy the landlord collected a security deposit of \$380.00. On May 13 the tenant gave the landlord a notice to end the tenancy effective with no specific effective date or the reasons for the notice to end – none the less the notice to end states they can be moved out anytime from June 01- June 30, 2010 if another renter can be found earlier. The tenant vacated all their belongings by May 20, 2010. The tenant did not pay rent for June 2010.

The tenant testified that on May 11, 2010 they were informed that the suite directly above them had been treated for bed bugs. On May 12 the tenant claims they found one (1) bed bug in their bathroom. On May 13 the landlord applied a powder on the perimeter of the suite. On May 16 Orkin Pest Control checked for bed bugs but did not apply treatment. On May 20 the tenant had discarded some of her belongings and had all of her belongings out of the unit. The tenant claims that she vacated because the landlord violated her right to a safe and healthy environment – stating that the landlord never posted any hazard signage in the building of bed bug treatments. The tenant further testified that they discarded their belongings as this is what they understood they should do in the event of a bed bug outbreak. The tenant provided estimates and receipts of items claimed and photographs of the landlord's 'powder application' as well as a photograph of a pink area - purportedly of the tenant's arm – as indication of a bed bug bite.

The landlord testified that on April 24, 2010 they received a concern from the suite above this tenant, that they may have encountered a bed bug. Despite of no signs of any bed bugs, they appeased the long term tenant and out of an abundance of caution, treated the unit at the request of the tenant. On May 12 they heard from the applicant that they had found a bed bug. On May 13, again out of caution, they applied a protective barrier of silicate compound around the perimeter of the unit. On May 15 the tenant cancelled an inspection by the Pest Control company, however, allowed the landlord to check for bed bugs, and they concluded there no signs of such. On May 26, 2010 the Orkin Pest Control Company checked the applicant's suite and found no sign of bed bugs; however, again out of an abundance of caution, the landlord testified that they had Vancouver Bed Bug Company treat the unit. The tenant had already vacated and emptied the rental unit almost one week before. On May 31, the landlord and tenant conducted an inspection of the vacant rental unit. The inspection report reflects that the landlord and tenant signed the report with the report stating that *½ June rent owing \$380 and refund of nil*.

The landlord testified that they attempted to re-rent the suite as soon as they were notified by the tenant that they wished to vacate, so as to mitigate any revenue losses for themselves and to save the tenant having to possibly pay all of June rent. Despite their efforts, they were only able to secure a new renter for June 15, 2010, and therefore submit that the applicant is responsible for ½ month's rent of \$380.

The landlord provided a witness:

Witness 1 – Orkin Pest Control Company representative.

The witness testified under sworn affirmation. The witness is an employee of the pest control company and a contractor for the landlord. He testified that the company does

not fumigate, and only applies a contained spraying method when required, and that there is no transfer of treatment products suite to suite. The direct tenant is notified of the contents and any procedure. The pest control company or anyone applying chemicals is required by law to post signage of treatments only when common areas are treated. The white powder silicate used by the landlord is a product they sell over the counter and it is not a chemical, but a compound of crushed sand and seabed shells and is natural and non –toxic. The witness further testified that at no time was any evidence of bed bugs found in the applicant's suite and that all treatments on the residential property were applied on a precautionary basis at the request of tenants or the landlord to invoke a guarantee. The witness also testified that it is not necessary to discard belongings unless heavily infested. Hard furniture does not need to be discarded and mattresses can be treated or encased in a barrier bag as treatment. Clothing and soft items should be laundered and dried.

The landlord submitted that the tenant did not have to vacate and had no reasonable reason to vacate, and refused to co-operate with any protocol to deal with any purported bed bug issues. The landlord claims they exercised all due diligence and acted out of an abundance of caution at all times, and that to this date there has not been any evidence advanced that the applicant's unit had bed bugs. The landlord claims that it was only after the tenant submitted their notice to end that they gave any indication as to why they were vacating.

The tenant submitted her rights were violated and on this basis she vacated and discarded her belongings, and that the landlord is therefore responsible for her discarded belongings.

Analysis

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that in order to justify payment of damages under sections 67 of the Act, the Applicant tenant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in losses to the Applicant pursuant to Section 7. It is important to note that in a claim 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 Applicant tenants must satisfy each component of the test below:

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 respect to the tenant's claims: on the face of the evidence and on the balance of probabilities I find that the loss of furniture and belongings suffered by the tenant was due to the tenant's decision to discard her property and to vacate. In this matter I find no basis and no conclusive evidence that the rental unit ever had bed bugs. I prefer the evidence of the landlord and the landlord's witness that the landlord did arrange for treatments of bed bugs in certain suites out of an abundance of caution. Consequently, I cannot conclude that the Landlord was negligent in addressing the concerns of bed bugs. I find that the Landlord acted very quickly to try to resolve any claimed problem and went so far as to apply treatments for bed bugs in the face of no evidence of bed bugs. Consequently, I find that there has been no breach of the Landlords' duty under s. 32 of the Act (to render the rental unit fit for occupation) and therefore no responsibility to compensate the tenant for discarding their allegedly infested belongings.

In respect to the landlord's claim: I find that the tenant provided sufficient notice to end the tenancy for an effective date of June 30, 2010, but chose to vacate May 20, 2010, and did not pay the rent for June 2010. I accept the landlord's attempts to mitigate their

losses and secure a new tenancy for the middle of June. I find the landlord has established a claim for ½ month's rent in the amount of **\$380**.

On the basis of all the above, I find the tenant has not proven her burden that her losses happened solely because of the actions, conduct or neglect of the landlord in violation of the *Act* or tenancy agreement and is therefore not responsible for her claimed losses. As a result, **I dismiss** the tenant's application in its entirety without leave to reapply.

I find that the landlord's Application has merit, and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution, in the amount of \$50, for an entitlement in the sum of **\$430**.

Conclusion

The tenant's application has been **dismissed** without leave to reapply.

I order that the landlord retain the **deposit** and interest of \$380.26 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$49.74**. 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*.