



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for compensation for damage or loss under the Act, return of the deposit paid and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$1,754.36 for damage or loss under the Act?

Are the tenants entitled to return of the balance of the deposit paid in the sum of \$237.50?

Background and Evidence

The following facts were established with the parties at the start of the hearing:

- The tenants moved into the rental unit on October 25, 2010, for a tenancy that was to commence on November 1, 2010;
- That on October 22, 2010, the tenants paid a deposit in the sum of \$475.00;
- That the tenants received a refund of \$237.50 of the deposit on November 16, 2010;
- That the tenants vacated the rental unit on November 1, 2010; and
- That a tenancy agreement was not signed.

The tenants stated that they asked the landlord if the unit had any bed bug problems and they were told it was bed bug free. On October 26, 2010, the tenants woke up and discovered they had been bitten by bed bugs. They could not reach the building manager until October 27, 2010, at which time treatment was immediately arranged for the same day.

The tenants requested treatment again and 3 days later the landlord arranged for another application by the pest control company, even though this would normally occur 14 days after the initial treatment, due to the life cycle of the pests.

The tenants decided they would move out as the bugs were on the walls and in numbers that they found disturbing. They left the rental unit on November 1, 2010, after giving verbal notice to the landlord.

The tenants are claiming the following costs:

- 1,404.00 mattress;
- 79.99 vacumn;
- 84.99 steam cleaner; and
- 184.39 HST.

The tenants provided a copy of an October 30, 2010 receipt for the bed, bedding and delivery costs; a November 1, 2010 receipt for the vacumn cleaner and an October 29, 2010, receipt for the steam cleaner.

The tenants left the vacumn in the rental unit as they did not wish to infect their new home. They used the steam cleaner on the clothing and have kept that cleaner. The tenant's mattress was purchased a number of years ago and for the past 4 years it was stored at a friend's home, until recently when the tenant returned to take up residence in Canada. The mattress was left in the rental unit and the landlord had agreed to dispose of it for the tenant.

The landlord testified that they did not believe bed bugs were present in the unit and that they cannot determine where the bugs originated. The landlord did not wish to accuse the tenant's of bringing the bugs into the unit; only to point to the fact that they cannot determine their origin. The landlord did not tell the tenants to leave their bed, and pointed to the treatment preparation sheet given to the tenants that instructed them to immediately dispose of the vacumn bag; the instructions did not suggest the vacumn would be contaminated.

The landlord stated they did not understand why the tenants purchased a steam cleaner, as it would not have any effect on the pests.

The landlord submitted a stated signed by the Principal of the company, which stated that he had talked with the tenants on November 15, 2010, and that a mutual

agreement had been reached in relation to the deposit; that the landlord would repay one half of the deposit and retain the balance.

The landlord supplied copies of the pest control company receipts and treatment instructions as evidence.

The tenants submitted that they gave the building manager their forwarding address at the time they gave verbal notice ending the tenancy. The landlord responded that they never received the address in writing and that it was received via the telephone conversation on November 15, 2010.

Analysis

Section 32 of the Act provides, in part:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlord took immediate steps to address the report of bed bugs by having the rental unit treated on the day they became aware of the problem. The landlord also agreed to treat the unit a second time, 3 days after the first application; which was not in keeping with the normal process to treat 14 days later, in order to control larvae that had hatched.

There is no evidence before me that that the tenants gave the landlord a reasonable period of time to address the bed bug issue. The tenants were disturbed by the presence of the pests, but there is no evidence that the pests were present due to any negligence on the part of the landlord. The landlord has an obligation to take action in response to a report of pests and they did that in what I find was a diligent manner.

The tenants were free to choose to leave the rental unit, but decided to leave behind a mattress that was of an unknown age, that had been stored at another residence for 4 years. The tenants may have been wise to purchase a new mattress, but I find there is no breach of the landlord's responsibility under the Act, that would result in the landlord being responsible for the cost of a new mattress.

I find that the tenants chose to leave their vacuum and that disposal of the bags after use was sufficient to ensure future safe use of the machine. The tenants have retained the steam cleaner, so have not suffered a loss, as they have continued use of that item. Therefore, the claim for the vacuum and steam cleaner is dismissed.

In relation to the deposit paid, there is no evidence before me that the tenants provided the landlord with their forwarding address in writing. The landlord acknowledged receiving an address during a telephone call on November 15, 2010, and the next day the tenants received a partial refund of the deposit. Therefore, in the absence of the provision of a written forwarding address given to the landlord, I find, pursuant to section 38 of the Act that the landlord has 15 days from the date of this hearing to return the balance of the deposit to the tenants via the address included on the application for dispute resolution. The landlord is also at liberty, pursuant to section 38 of the Act, to submit a claim against the deposit within 15 days of today's date.

If the landlord does not either claim against the deposit paid or return the balance in the sum of \$237.50 to the tenants by April 20, 2011, the tenants are at liberty to submit an application claiming return of the balance of the deposit paid.

Conclusion

The tenant's application for compensation is dismissed.

The balance of the deposit in the sum of \$237.50 must be returned to the tenants by April 20, 2011, or by that date the landlord may submit a claim against the deposit.

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: April 06, 2011.

Residential Tenancy Branch