



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for a an Order of Possession, a Monetary Order for damage to the unit and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for damage to the unit; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for the return of the security deposit.

At the outset, the landlord stated that the tenants moved out of the rental unit either February 5th or February 6th, 2011. Therefore the landlord withdrew his application for an Order of Possession.

Both parties repeatedly forwarded rebuttal evidence up and until one day before the date of the hearing, in response to each other's late submissions. The landlord's application was originally dated March 18th, 2011, and the tenants' May 17th, 2011. The landlord stated that he would need an adjournment to provide new evidence in response to the tenants' late evidence.

The submission of late evidence is a clear violation of the Rules of Procedure. After hearing the parties' testimony, I find that it would be unduly prejudiced to accept their

late evidence and therefore it is not considered in my decision and I declined to adjourn this matter. I did however consider their testimony at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Are the tenants entitled to the return of their security deposit?

Background and Evidence

The rental unit consists of a separate, detached unit at the rear of a residential city lot. Pursuant to a written agreement, the tenancy started on September 1st, 2009, and based on a fixed term was to ended on January 31st, 2011. The rent was \$936.00 per month and the tenants paid a security deposit of \$450.00. A condition inspection report was completed at the start of the tenancy, but not at the end.

The landlord testified that he never received the tenants' forwarding address in writing. He said that he was provided an incomplete address by voice mail, and that as a result his documents could not be successfully delivered. He said that he made three verbal requests by leaving voice mail messages; he provided a phone billing record and identified a call made to the tenant on February 9th, 2011, at 5:50PM, concerning a request for the correct forwarding address and a move-out inspection.

In his documentary evidence, the landlord provided in part 27 black and white photographs of the unit in support of his claim for damages. He testified that on March 10th, 2011, his new tenants informed him that they discovered insects.

The landlord provided a copy of an email dated March 14th, 2011 from Alma Pest and Building Services, identifying the insects as sugar ants, that they were found along the walkway and in the garden, and that it is their habit to migrate inside homes in search of

sugar and bread crumbs at that time of the year. The landlord said that he found food residue behind the fridge and stove and surmised that this is what attracted the ants inside.

He said that he went to the unit the week after the tenants left; that he found the floor reasonably clean; and that he did not have his glasses on and that therefore he could not see any ants.

The landlord stated that the tenants did not return the keys. He said that he removed the lock himself and took it to a locksmith to have it rekeyed.

The landlord stated that his new tenants informed him of a drain problem between March 10th and March 15th, 2011, during their move-in inspection. He said that the last inspection on the plumbing was during a repair in October 2009.

The landlord said that it is unusual for him to have difficulty renting this suite, and attributed the problem to the ants. He said that he lost 2 weeks' rental income. He said that he sprayed the unit twice, had the unit professionally cleaned, and re-rented it for March 15th, 2011.

The landlord submitted receipts and a claim as follows:

- Coit Cleaners:	\$ 159.60
- Coit Cleaners enviro-surcharge:	\$ 14.00
- AJ Security Locksmith:	\$ 33.32
- Landlord's time for lock repair:	\$ 50.00
- Plumbing repairs:	\$ 157.92
- Registered mail costs:	\$ 18.25
- Rona pesticides:	\$ 55.31
- Home Depot pesticides:	\$ 25.21
- Registered mail to agent:	\$ 9.59

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|--------------------------|-----------|
| - Filing fee: | \$ 50.00 |
| - Loss of rental income: | \$ 450.00 |
| - Total: | \$1023.20 |

The tenant's agent did not dispute that the tenants gave the landlord an incomplete forwarding address and she provided a new forwarding address at the hearing. Concerning the absence of a move-out inspection report, she stated that she had no explanation why it did not occur.

The tenant testified that she had no recollection that the landlord made any calls in which he requested to arrange for a move-out inspection. Concerning the ants, she stated that she had this problem before and successfully dealt with the problem. She said that there are cracks on the floor and suggested that the foundation made not be sound. She stated that she spent two days cleaning; that although she did not pull the fridge and stove, these appliances were not pulled during the move-in inspection either; and that there were no ants when she left. She agreed that she was late and did not return the keys until a month later. Concerning the plumbing, she said that she does not know what caused the problem. She stated that she has long hair but that she verified the drains and that they were not clogged when she left.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage.

When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the

burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenants.

The parties' documentary evidence and numerous correspondence exchanges were indicative of strong disagreements; nevertheless, the tenants' application is straightforward as it strictly concerns the return of the security deposit, and the legislation is clear in that regard:

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Based on the parties' testimony, there was no evidence that the tenants gave the landlord a forwarding address in writing in accordance with the Act. Therefore the tenants' application is dismissed. Effective from the date of this hearing, the landlord is now aware of the tenants' forwarding address. The landlord is hereby put on notice that he is deemed to have received the tenants' forwarding address on July 16th, 2011, which is 5 days from the date of this decision. The landlord must therefore return any portion of the security deposit no later than July 31st, 2011.

Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports on the landlord. While I prefer the landlord's testimony that he offered the tenants an opportunity to do a move-out inspection report, however the landlord's claim was not supported by a report completed in the tenants' absence.

The problems with the unit were identified by the new tenants, approximately five weeks after the previous tenants left. Given this passage of time, I find that there is insufficient evidence to support the landlord's claim against the tenants.

Concerning the bug infestation, the expert identified ants in the walkway and the garden; he provided no evidence to support the landlord's assertion that the tenants

were responsible for the ants finding their way inside the house. Ants in search of food may be found even inside clean residences; I have no expert evidence that a small amount of food residue is the only cause of ants inside the house. The landlord found the floor reasonably clean and he did not pull the appliances after the tenants left; since the landlord did not do a move-out inspection I have no evidence before me of a different outcome, had the landlord cleaned those areas on time. Therefore I dismiss the portion of the landlord's monetary claims and loss of rental income related to bug infestation.

Other than the filing fee, there is no provision for a party to make a claim under the Act for mailing or administrative costs related to an application for dispute resolution. Accordingly this portion of the landlord's claim is also dismissed.

The tenant agreed that she was late returning the keys and I award the landlord recovery for this portion of his claim in the amount of \$50.00 and \$33.32. The tenant also stated that she did not clean behind the fridge and the stove. The tenant is responsible to clean these areas and I award the landlord a nominal compensation in the amount of \$50.00.

Conclusion

The landlord established a claim of \$83.32. Since his application had merit, I grant the landlord partial recovery of the filing fee of \$25.00 for a claim totalling \$133.32. The tenants did not apply to recover this fee.

The tenants' application for the return of their security deposit is premature. The landlord has until July 31st, 2011 to return the balance of the security deposit in the amount of a balance of \$316.68. If the landlord fails to comply, the tenants may make an application for dispute resolution.

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: July 11, 2011.

Residential Tenancy Branch