



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant?
2. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

The parties provided the following consistent testimony. The month-to-month tenancy commenced March 1, 2011 and ended April 30, 2011. The tenant was required to pay rent of \$1,700.00 on the 1st day of every month. The tenant paid an \$850.00 security deposit. On March 31, 2011 the landlord received the tenant's notice to end tenancy effective April 30, 2011; however, one of the occupants of the rental unit did not vacate until the evening of May 1, 2011.

The landlord is seeking compensation for loss of rent for the month of May 2011 and provided two reasons for this claim. Firstly, the landlord submitted that the tenant had indicated the rental unit had bed bugs on a bed bug registry website and indicated the landlord was not taking sufficient action to remedy the problem. Secondly, tenants who were to move in May 1, 2011 walked away because the house had not yet been vacated by the last occupant. The landlord explained that the new tenants paid a security deposit April 21, 2011 upon viewing the exterior of the rental unit only. When the new tenants arrived with their belongings on May 1, 2011 and the unit was not vacant the landlord released the new tenants of the tenancy agreement and gave the new tenants \$200.00 for their delivery costs.

The tenant did not deny that information was posted on the internet about the rental unit having bed bugs and opinions that the pest control company was unprofessional. The tenant also submitted that the occupant had the landlord's father's permission to stay in the unit past April 30, 2011. The tenant explained that she often dealt with the landlord's father with respect to matters involving the rental unit.

The landlord's father was called as a witness during the hearing. He denied giving the occupant permission to stay in the unit past April 30, 2011.

The landlord is also seeking compensation of \$952.00 for bed bug treatments. The landlord submitted that the tenant or her occupants brought bed bugs into the rental unit. The landlord pointed to a posting on the bed bug registry site indicating the tenant had an issue with bed bugs in a previous rental unit.

The tenant submitted that she had lived bed bug free for approximately one year before moving into the rental unit. Further, the tenant pointed out there was an upper floor that was tenanted as well and there had been one spraying for bed bugs upstairs.

Analysis

Upon consideration of the evidence before me I make the following findings and provide the following reasons.

Loss of rent

The tenant gave the landlord one full month of notice to end the tenancy with an effective date of April 30, 2011. Accordingly, the tenant was obligated to ensure the rental unit was vacated by April 30, 2011. I find the disputed testimony to be insufficient to conclude the landlord, or an agent for the landlord, waived their entitlement for vacate possession on April 30, 2011. Therefore, I find that there was over-holding of the rental unit for one day.

Section 57 of the Act provides for what happens if a tenant does not leave when the tenancy ends. Section 57(3) provides that a landlord may claim compensation from an over-holding tenant for any period that the over-holding tenant occupies the rental unit after the tenancy ended. Since the tenant is responsible for the persons she permits on the property, I find the tenant is responsible for the over-holding occupant. Therefore, pursuant to section 57 of the Act, I find the landlord entitled to compensation equivalent to one day of rent. I calculate one day of rent to equal \$56.67 [\$1,700 / 30 days].

Section 57(4) of the Act provides that if the incoming tenant brings proceedings against the landlord for losses associated with the inability to occupy the rental unit, the landlord may apply to have the over-holding tenant added to those proceedings. Accordingly, the over-holding tenant would be held responsible or partly responsible if the incoming tenant were to be awarded damage or loss. In this case, the landlord agreed or decided to end the tenancy with the incoming tenant rather than make alternative arrangements for one day. I find the landlord's decision to release the incoming tenant of the tenancy agreement is not a decision for which the tenant can be held responsible under the Act. Similarly, the landlord's decision to compensate the incoming tenant \$200.00 was also that of the landlord and I do not hold the tenant responsible for that decision.

With respect to the bed bug postings on the internet I find as follows. Section 47(1)(j) provides that if a tenant knowingly provides false information about a residential property to a prospective tenant or purchaser viewing the property, the landlord may end the tenancy for cause. The evidence before me shows that an occupant and an "anonymous" person posted their opinions and version of events about bed bugs and pest control treatments at the residential property; however, the evidence does not satisfy me that it was the tenant that knowingly posted false information and that the false information was given to a prospective tenant viewing the property. Therefore, I do not find the landlord entitled to compensation for postings on the bed bug registry website.

Bed bug treatment costs

Determining when and how bed bugs were introduced to a residential property is often extremely difficult, especially in multiple family buildings, since bed bugs can migrate from one unit to the other.

Generally, landlords are responsible for treating for bed bugs and tenants endure the inconvenience of preparing for and accommodating treatments.

I found the disputed evidence insufficient for me to conclude, based on the balance of probabilities, that the tenant or the occupants were negligent or breached the Act in such a way as to cause a bed bug infestation. Therefore, I do not award bed bug treatments costs to the landlord.

Security deposit

Since the landlord has the tenant's \$850.00 security deposit in his possession and I have found the landlord entitled to one day of rent equalling \$56.67, I order the landlord to return the balance of \$793.33 to the tenant.

The tenant is provided a Monetary Order in the amount of \$793.33 to serve upon the landlord and ensure payment is made. The Monetary Order may be filed in Provincial Court (Small Claims) to be enforced as an Order of the court.

Given the landlord's limited success in this proceeding I make no award for recovery of the filing fee.

Conclusion

The landlord established an entitlement to compensation for one day of over-holding in the amount of \$56.67. The landlord is ordered to return the balance of the tenant's security deposit to the tenant. The tenant is provided a Monetary Order in the amount of \$793.33 to serve upon the landlord and enforce as necessary.

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: September 16, 2011.

Residential Tenancy Branch