



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNDC MNSD RPP

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for the return of the unpaid balance of his security deposit, and to obtain an Order for the return of the Tenant's personal property.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Who is to be named as respondents to this dispute?
2. Have the Landlords breached the *Residential Tenancy Act*, regulation, tenancy agreement, and/or the mutual agreement between the parties?
3. If so, has the Tenant met the burden of proof to have his property returned, delivered, and for monetary compensation as a result of this breach?

Background and Evidence

At the outset of the hearing a discussion took place to determine which respondents should be named as parties to this dispute as the applicant Tenant had requested that in addition to the Landlord as named on the tenancy agreement that an amendment be made to the application for dispute resolution to include as respondents the Limited company which owns the property and the contractor used to relocate the tenants.

After hearing oral submissions from each party I determined the Limited company which owns the property and the limited company which is listed as the Landlord on the tenancy agreement to be joint and severally liable as respondent Landlords to this dispute. The contractor, which was represented by CC at the hearing, is not a named party to this dispute; rather he is a witness for the respondent Landlords as he was hired by the property owner to move this Tenant and had firsthand knowledge of circumstances pertaining to this dispute. The Advocate agreed to this reasoning and decision.

The parties agreed the tenancy was a month to month tenancy that began on May 1, 2010 for occupancy in a single room occupancy (SRO) accommodation. Rent was payable on the first of each month in the amount of \$460.00 and on approximately May 1, 2010 the Tenant paid \$175.00 as the security deposit. The Tenant vacated the property approximately August 29, 2011.

CC affirmed he was hired by the owners to relocate every tenant as they had been issued four months notice to end tenancy so the property could be completely renovated. He would attend the rental unit regularly to meet with tenants to make arrangements for their moves which included moving their property to their new location, arranging mail forwarding and return of their security deposits.

CC advised that this Tenant came to him with very short notice to move to his new location. CC arranged to hire a moving company and told the Tenant to be packed and ready to go when they attended. When CC attended the Tenant's unit there was two staff assisting the Tenant from a home care agency, the Tenant was unpacked, unprepared, and intoxicated. He said they found everything his room to be infested with bedbugs and cockroaches so he made the decision that they would spray the Tenant's clothing and that they would not be moving all of the Tenant's possessions. Items such as a microwave, stereo, speakers, air conditioner, computer armoire, dishwasher and television were not moved and left in the room. CC confirmed the Tenant was not happy about this decision however they did provide the Tenant with a television. CC stated he did not want to move this items to the new SRO as they would not allow infected articles to be moved in. He does not recall if there was toaster and electric frying pan but he does recall the room was a extremely dirty and the Tenant signed a document agreeing to pay for another tenant to clean up the room out of his security deposit.

The Advocate presented the merits of the Tenant's application as the Tenant was suffering from health problems while in attendance at the hearing.

The Advocate pointed out how CC's testimony was contradictory as he confirmed the Landlords agreed to move tenant's possessions, that CC determined the majority of possessions would not be moved, and that the Tenant was not happy about the decision. He pointed out that CC confirmed the Landlords took responsibility to move the Tenant's possessions. The Tenant's mail was not forwarded and he did not agree to allow the Landlords to withhold \$100.00 from his security deposit to pay another tenant to clean his room.

SL affirmed that the entire building and many of the tenant's rooms were infested and the Landlords knew there was a problem.

The Advocate argued that the Landlords or CC ought to have checked the Tenant's room prior to agreeing to move him to determine if there was going to be any problems moving his possessions. He pointed out how they certainly treated his clothing, which he believes would have been more infested, and yet they moved them. All of the possessions that were left behind were made of wood, metal or plastic therefore they would have been easy to treat prior to moving them. He stated that the decision not to move possessions should have been the Tenant's and not the Landlords or their contractors as the agreement was for the Landlords to move the Tenant's possessions. He questions why the articles were not treated and moved to the Tenant at a later date.

SL pointed to her evidence which included a copy of a letter that was sent registered mail to the Tenant November 16, 2011, informing him that his possessions were still in his room and he was welcome to come and pick them up.

The Advocate advised the Tenant did not receive this letter and then pointed to his documentary evidence which indicates the Tenant's air conditioner was later sold to another tenant; therefore it had to have been treated before selling it. They provided additional evidence to prove there was a countertop dishwasher which the Tenant had purchased November 20, 2009 for \$279.99 which included taxes. Also, the responsibility to move the Tenant's possessions lies solely with the Landlords regardless of how intoxicated the Tenant may have been on that date.

CV affirmed the Tenant's possession should still be inside his old room. He stated the entire building is undergoing fumigation by a pest control company which is to be completed by January 15, 2012. CV agreed to contact the Advocate in early January 2012 to arrange a meeting at the Tenant's old room so they could catalogue those possessions which remain in the unit. CV could not provide testimony about the alleged selling of the Tenant's air conditioner but did state he would arrange to have all of the

remaining possessions fumigated and moved to the Tenant and would work with the Advocate to try and resolve this matter.

As the hearing time was about to expire, the Advocate requested interim Orders as follows: the Landlord to treat all of the Tenant's remaining possessions prior to meeting with the Advocate to catalogue the possessions and move them to the Tenant and reconvene in early March 2012 on a date that the Advocate volunteers (all day Monday, Wednesday and Thursday prior to 1:00 p.m.).

Analysis

Section 32 (1) of the Act provides that 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.

After careful review of the aforementioned, the documentary evidence which included, among other things, a copy of the tenancy agreement, written statements from witnesses, written statements from the Landlords, contractor, and the Advocate, I find the Landlord to be responsible to treat and move "all" of the Tenant's possessions.

Conclusion

I hereby issue the following interim Orders pursuant to section 62 and 65 of the *Residential Tenancy Act*:

- The Landlord is to ensure all of the Tenant's possessions that remain at the rental property are treated or fumigated by a licensed pest control company prior to the arranged meeting with the Advocate; and
- The Landlord is to arrange and meet with the Advocate at the rental unit to catalogue the Tenant's remaining possessions; and
- The Landlord is to have all of the Tenant's possessions inspected to ensure they are clear of pests and then move the possessions to the Tenant's new residence; and

The parties are to attend the reconvened hearing unless they are able to settle the remaining matters. If the parties come to a settlement agreement they are to put the agreement in writing, sign and date the agreement and provide a copy of the agreement to each other and the *Residential Tenancy Branch* with a request to cancel the reconvened hearing.

Notices of reconvened hearing will accompany this decision.

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: December 28, 2011.

Residential Tenancy Branch