



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for an Order for the return of double the balance of the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant, the tenants advocate, the tenant's translator and the landlord attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord states that the landlords name and address on the application is incorrect. The parties did not raise any objections to the error being corrected and this has now been amended.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for double the balance of the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy originally started in unit 605 in March, 2009. The tenant moved to unit 608 on November 01, 2011. This was a fixed term tenancy for six months. Rent for unit 608 was \$910.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$440.00 on March 01, 2009 and an additional sum of \$15.00 on November 01, 2011. A move in and out inspection was completed with the landlord and tenant and the tenant gave the landlord his forwarding address in writing on December 02, 2011.

The tenants advocate states that the tenant had to move from the rental unit as the landlord breached the tenancy agreement with the tenant by not providing a rental unit that was clean and sanitary. The tenant moved from the unit on November 14, 2011. The tenant's advocate states the landlord has only returned the sum of \$225.00 to the tenant on November 13, 2011 and this came from the tenant's roommate after the landlord had given this sum to the roommate. The tenant now seeks to recover double the remainder of the security deposit as it was not returned within 15 Days of the landlord receiving the tenants forwarding address.

The landlord disputes the tenants claim. The landlord testifies that the tenant's roommate gave the tenant \$220.00 in June 2011 as his share towards the security deposit. The landlord agrees that he also gave the tenant's roommate \$225.00 in November, 2011 which he believes the roommate returned to the tenant. The landlord claims that as the tenant was given this amount at that time the tenant has now had all his security deposit returned to him as the tenants roommate has continued to reside in the rental unit.

The tenant disputes the landlord's claims and testifies that he did not receive the sum of \$225.00 from his roommate in June, 2011. The tenant claims the only amount he has received from his roommate was the \$225.00 which the landlord gave the roommate in November, 2011. The tenants advocate states the landlord is responsible for returning the tenant's security deposit and this is not the responsibility of the roommate.

The tenants advocate testifies that the tenant had to move out of his previous unit due to the repairs that were required in that unit which the landlord failed to rectify. Upon moving into this unit the tenant found there was a bedbug infestation and the tenant suffered bedbug bites as a result of this. The tenant testifies that at first he complained to the landlord about mould in the bedroom and the landlord gave the tenant some spray and some glue and was told to fix the problem himself. After the first night the tenant was bitten by bedbugs so he contacted the previous tenants who resided in this unit. The tenant discovered that they had suffered from a bedbug problem in this unit for the last seven months of which the landlord after being notified did nothing about the problem. The tenant has obtained a written statement from the previous tenants pertaining to this.

The tenants advocate states that the landlord had not notified the tenant that there had been a bedbug infestation in the unit prior to the tenant moving in. The tenant notified the landlord of this problem and showed him a live bedbug and the bites on the tenant's body. The tenant testifies that the landlord did get a pest control company in to spray his unit once on November 11, 2011 however this did not kill the bedbugs and no follow up treatment was arranged. The tenants advocate testifies that the tenant did prepare his unit for treatment and the tenant seeks to recover the costs associated with this preparation as the tenant had to purchase mattress covers, bags, sprays and, a mask at a cost of \$111.39. The tenants advocate also states the tenant had to go to the doctors and get a prescription cream for the bites of which the tenants share towards this cream was \$1.05. The tenants advocate also states the tenant had a Persian rug which had to be cleaned by a specialist at a cost of \$70.00. The tenant has provided receipts for these items claimed.

The tenants advocate states that the tenant also had to discard his bed and box spring. The tenant seeks to recover the costs of replacement these at \$390.00. No receipt has been provided. The tenant has provided photographic evidence of his bed and sofa which the tenant claims he discarded.

The tenants advocate states the tenant could no longer continue to live in the rental unit even after treatment of the unit because the bedbugs continued to bite the tenant and the bedbugs remained in the unit. The tenants advocate states the tenant moved from the unit

and had to hire a vehicle at a cost of \$50.00 and paid for gas for this vehicle of \$37.00 to assist the tenant to move to a new unit. The tenant therefore seeks to recover these costs from the landlord.

The tenant has provided a letter in evidence from his former roommate which confirms there were bedbugs in the unit.

The landlord disputes the tenants claim and testifies that the previous tenants had not informed the landlord that they had bedbugs in this unit and states when the tenant moved into the unit there were some small wood bugs around the sink. The landlord testifies that he sprayed these and left the tenant with more spray to kill these bugs. The landlord testifies that if he had known there were bedbugs in the tenants unit he would have been afraid to carry out the repairs he did to the floor and heating in the tenants unit.

The landlord testifies that the building has had five cases of bedbugs and these have all been treated by the pest control company. The landlord testifies that the tenant did show the landlord that he had bites on his body and the landlord arranged to have the tenants unit treated on November 11, 2011. The landlord agrees that only one treatment was arranged for this unit and the whole unit was sprayed. The landlord testifies that the tenant moved out because the tenant and his roommate were fighting and on one occasion the Police had to be called.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for the return of double his security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then

pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

The landlord argues that the tenant's roommate gave the tenant his share of the security deposit in June, 2011 therefore the tenant was only owed a half share of the security deposit which the landlord did return on November 13, 2011. The tenant argues that he did not receive any sums from his roommate in June and the landlord remains responsible to return all of the security deposit the tenant paid for his sole tenancy. The tenant agrees he did receive \$225.00 on November 13, 2011.

It is my decision that the tenant was a sole tenant of the rental unit and paid a security deposit of \$455.00 to the landlord. The landlord holds this amount in trust for the tenant until such a time as the tenancy ends. As I only have evidence to show that \$225.00 was returned to the tenant at the end of the tenancy the tenant is therefore entitled to recover double the balance of the deposit as the landlord failed to return this to the tenant within 15 days of receiving the tenants forwarding address in writing. Consequently, it is my decision that the tenant is entitled to recover the sum of **\$460.00** from the landlord pursuant to s. 38(6)(b) of the *Act*.

With regard to the tenants claim for money owed or compensation for damage or loss from the landlord; I have considered both arguments in this matter and have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find from the evidence presented that the landlord was aware this unit had previously had bedbugs which had not been treated and the landlord did not inform the tenant of this situation before the tenant moved into the unit. I also find that although the landlord did arrange to have the unit treated the tenant incurred costs to protect his belongings from further infestation. The tenant has provided some receipts for his claim and it is my decision that the tenant has therefore met the burden of proof with regards to the items he purchased to protect his belongings to the sum of **\$111.39**. I also find in favor of the tenants claim for cleaning his rug at a cost of **\$70.00** as this work would not have been required if the tenant had known in advance there was bedbugs. The tenant is also entitled to recover the tenant's share of the costs for his prescription cream at **\$1.05**. However the tenant has not provided any receipts to verify the actual costs incurred in replacing his bed and box spring and therefore this section of his claim for \$390 cannot succeed.

With regard to the tenants claim for moving costs of \$87.00 I find the tenant would not have suffered this loss if the landlord had taken preventative action in dealing with the bedbugs and I have insufficient evidence to support the landlords claim that the tenant moved out because he and his roommate were fighting and not because of issues with bedbugs. Consequently I uphold the tenants claim for moving costs of **\$87.00**.

The tenant will receive a Monetary Order pursuant to s. 67 of the Act for the following amount:

Double the balance of the security deposit	\$460.00
Items purchased	\$111.39
Medication cream	\$1.05

Rug cleaning	\$70.00
Moving costs	\$87.00
Total amount due to the tenant	\$729.44

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$729.44**. The order must be served on the respondent and is enforceable through the Provincial Court 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*.

Dated: February 27, 2012.

Residential Tenancy Branch