



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The parties and their witnesses appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process. The parties each acknowledged receipt of the other's evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and to recover the filing fee?

Background and Evidence

This tenancy began on February 1, 2012 and ended on June 30, 2012.

The rental unit was on the upper floor of the residential property and the landlord, who owned the home, lived downstairs and ran her dog grooming business from her portion of the residential property.

The tenant is requesting a monetary order for \$3000.00, without submitting a specific breakdown as to the elements of her claim.

The tenant said the claim was a request for her security deposit and pet damage deposit of \$800.00 each to be returned along with a claim for a month's rent, or \$1600.00. Although this amount equals to \$3200.00, the tenant said her monetary claim was \$3000.00.

The tenant's relevant evidence included photos of the rental unit, some of which showed insects, a bag of dead insects, the tenancy agreement, witness statements and a written submission.

In support, the tenant said that she was entitled to have her deposits returned as there was no damage to the rental unit, either by her dog or by her family.

The parties were previously in dispute resolution, on the landlord's application. In a hearing on July 3, 2012, another Dispute Resolution Officer ("DRO") granted the landlord a monetary claim of \$3250.00, which she offset by the security deposit of \$800.00 and the pet damage deposit of \$800.00, and granted the landlord a monetary order for the balance due, in the amount of \$1650.00

As to the balance of her monetary claim, the tenant submitted that she endured an infestation throughout the tenancy. The tenant was not clear if the pests were termites or carpenter ants.

The tenant said that she notified the landlord and that the landlord failed to adequately address the problem as she endured the presence of the insects throughout the remainder of the tenancy. The tenant said the landlord never had a professional extermination company attend to the insect infestation.

The tenant also said that in June, the last month of the tenancy, the landlord turned off the heating and hot water to the rental unit as well as prevented access to the backyard for her dog's use by erecting a barricade, on the last day of the tenancy.

When questioned, the tenant said she was on unfriendly terms with the landlord in the last month and only left a note on the landlord's door to address the issue of lack of heat and hot water. Also when questioned, the tenant could not specifically state when she notified the landlord of the insect infestation and confirmed that there were no written requests for the infestation.

The tenant's two witnesses both stated that they witnessed the heat not coming on in June, each giving one day of seeing this occur. The male witness stated that he observed the insects.

In response, the landlord said that she was notified of the insects within 2 weeks of the beginning of the tenancy, which caused her alarm as she had never incurred this problem before. She called an extermination company, who stated that from the description, the insects appeared to be carpenter ants. She was informed that the remedy for carpenter ants was to have a carpenter drill a hole and find the nest in order to remove it.

The landlord had her boyfriend, who is a carpenter, remove the skylight from the tenant's bathroom the first dry day and found the nest. The carpenter disposed of the nest and vacuumed the ants.

According to the landlord, she asked the tenant if there were still ants, and she was told, "just a few stragglers."

The landlord said that she again called a professional pest control company and was told that the home would need to be fumigated, which would mean the pets had to be away 24 hours. The tenant would not agree, so the landlord applied her own perimeter poisons and ant traps. The landlord believed that this corrected the problem as she never heard from the tenant again after February. The landlord also said that she showed the rental unit for re-rental purposes in June, and saw no sign of the ants.

The landlord said that as the residential property was her house and home, there was no way she would leave an infestation untreated so that her property would be damaged.

As to the heating issue, the landlord said that she purchased a new washer for her dog grooming business, which blew out some breakers in June. She said that it was necessary to adjust the breakers for two days, but that the situation was then corrected.

The landlord said that she would not turn off the electricity to the rental unit because if the tenant and her family lost power, she lost power.

The landlord stated that she purchased an 80 gallon hot water tank and has never run out of hot water before. The landlord said the issue with the hot water came after the tenant's daughter had a 45 minute shower.

As to blocking the tenant's access to the backyard, the landlord stated that her boyfriend erected a barrier on the last day of the tenancy to prevent the tenant's pit-bull from coming into the landlord's entrance area as the tenant refused to keep her pit-bull from that area, after a request. The landlord said she was afraid after the pit-bull attacked her Chihuahua. The landlord pointed to her photographs that the tenant's dog still had access to the entire yard.

The landlord's relevant evidence included photos of the rental unit and yard, a written summary, the tenancy agreement, the previous Decision and a witness statement from the landlord's carpenter, outlining the steps taken to eradicate the pests.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

As I informed the tenant during the hearing, I would be unable to grant her request for a return of her deposits due to the issue having been previously decided in the landlord's favour. I cannot re-decide this issue as I am bound by this earlier Decision, under the

legal principle of *res judicata*. I therefore declined to consider the tenant's request to have her deposits returned.

As to the tenant's remaining monetary claim, the tenant as the claiming party is required to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenant to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

The tenant has not claimed that she suffered a monetary loss for the issues mentioned, but rather her claim involves an alleged loss of use and enjoyment of the rental unit.

Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

The tenant alleges that the landlord intentionally failed to complete necessary and timely insect treatments of her rental unit which resulted in the infestation continuing throughout the tenancy.

In the circumstances before me I am not persuaded that the landlord was negligent and I find that the landlord took reasonable steps to address the insect infestation. In reaching the conclusion, I found the landlord's testimony that she treated the infestation immediately upon hearing from the tenant due to her investment in the home and the fact she lived there as well to be credible and persuasive. I also relied on the tenant's failure to submit evidence that she issued written or oral notification to the landlord regarding a continuing infestation. The photos submitted by the tenant were not dated and the tenant could not testify as to when each was taken.

Additionally, the tenant alleged that the landlord turned off the heating and hot water to the rental unit. I find the tenant submitted insufficient evidence that the landlord did so. I again found the landlord's testimony credible that she lived in and conducted her dog grooming business in the home and that if the tenant failed to have heat and hot water, so did the landlord. I also relied on the tenant's failure to submit evidence that she issued written notification to the landlord regarding a lack of heat and hot water, apart from one note.

I also accept the testimony of the landlord, confirmed by the tenant, that a barricade was erected in the backyard the last day of the tenancy. However a review of the photos showed that the barricade blocked the tenant's dog from the landlord's entrance, not preventing the tenant's dog from the yard. I find the tenant submitted insufficient evidence that the landlord prevented the tenant from using the backyard.

Conclusion

As I find the tenant submitted insufficient evidence to support her claim that the landlord was negligent due to the above reasons or that she suffered a monetary loss due to the actions of the landlord, I dismiss the tenant's application for a monetary award, without leave to reapply.

As I have dismissed the tenant's monetary claim, I decline to award her recovery of the filing fee.

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 19, 2012.

Residential Tenancy Branch