Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by to deal with the tenant's claim for the return of the security and pet-damage deposits, costs of treatment of the tenant's possessions to eradicate bedbugs, storage costs, loss of property due to vermin contamination and the cost of the application.

The landlord and an agent for the tenants both appeared.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit and monetary compensation in damages section 67 of the Act?

Background

The tenancy began on October 31, 2011 with rent of $1,300.00. Three co-tenants were included in the tenancy agreement, but only 2 moved in. A security deposit of $650.00 and pet damage deposit of $150.00 was paid.

Evidence was submitted including a copy of the tenancy agreement, copies of communications, written testimony from the parties, written witness statements, copies of invoices, photos and a tally of the damages being claimed.

Also in evidence was the tenant's written forwarding address with a request for the return of the security deposits dated December 19, 2011, that was apparently given to the landlord in person on that date. The tenant had submitted a copy of a memo created and signed by the landlord advising the tenant:

> *"As you did not provide the proper 30 day notice to end your tenancy and there was no Breach by the landlord to warrant ending the tenancy without full notice, your deposit will not be returned to you.*
>
> *Please sign the Acknowledgement below and return to the Managers…at your earliest convenience."*

At the bottom of the document was a pre-typed statement indicating that the tenant acknowledged that due to insufficient notice they were not entitled to receive the deposit and acknowledging that "*no further action will be taken by me or the landlord in this regard*". The tenant signed the "Acknowledgement" section on December 20, 2011.

The tenant's position is that the Acknowledgement statement was not enforceable and that both the security deposit and the pet damage deposit should be returned.

The landlord argued that this constituted written permission from the tenant to allow the landlord to keep the security and pet damage deposits. The landlord pointed out that, although the unit was re-rented for January 1, 2012, a loss of $700.00 was incurred by the landlord because other residents within the complex moved into the suite leaving theirs vacant for the month of January. The landlord also pointed out that there was some cleaning to do after the tenants left.

The tenant argued that their short notice to vacate was directly due to a bedbug infestation that predated their tenancy. The tenant testified that they were not aware that the suite had recently been treated for an active bedbug infestation, nor that it was currently under a treatment regime administered in stages after the initial fumigation. The tenant testified that this fact, clearly known by the landlord, was never disclosed to the tenants when they viewed the suite, prior to signing the tenancy agreement.

The tenant testified that they became aware of the bedbug infestation only after they had already moved in and discovered that they were being bitten. The tenant testified that they also received an unsolicited letter from the previous tenant stating that he had vacated the unit mid-month in October 2011, just prior to their move-in date due to a bedbug problem. The letter confirmed that the vermin problem was discussed in detail with the owner of the building in October 2011and earlier.

The tenant stated that their tenancy became intolerable and a substantial amount of time and money was dedicated towards eradicating the bedbug infestation. The tenant testified that the situation caused enormous stress and they were forced to terminate the tenancy without providing one month notice pursuant to the Act.

The tenant testified that they washed and re-washed clothing and bedding and felt it necessary to discard many of their possessions. The tenants are requesting compensation for the cleaning and replacement of these items. The remainder of the monetary claims listed on the tenant's claim sheet, related to the storage and heat-treatment of their furnishings. The tenants are claiming compensation for these expenditures as well and provided copies of receipts and invoices to verify the costs.

The landlord testified that the problem with bedbugs was under control in October 2011. The landlord testified that, after the fumigation treatments were administered in September 2011, the situation was closely monitored by professional pest control experts who found absolutely no activity. No written reports from the pest-control contactor were submitted into evidence to verify the status of the bedbug problem.

According to the landlord, periodic follow-up treatments were also scheduled to ensure that any hatching eggs would be dealt with in time to prevent re-infestation. The landlord testified that, the tenant was not told that there was a problem with bedbugs because at the time they moved in, there was no sign of an active colony in the suite.

The landlord's position is that they acted immediately when the problem was reported in accordance with the prescribed methods and in strict compliance with their responsibilities under the Act. The landlord‘s position is that they should not be held liable for costs that did not arise from a violation of the Act on their part.

The landlord also took issue with the tenant’s choice to pay for expensive heat treatments, which, according to the landlord’s sources, are normally not necessary nor effective in many circumstances. The landlord pointed out that the tenant needlessly discarded property that could be salvaged. In addition, the landlord questioned the amount of compensation claimed for laundry costs.

The tenant defended the need to pay for storing and heat-treating their furnishings and stated that they were merely following recommendations by professionals in the field.

Analysis: Security Deposit

With respect to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the tenant provided the landlord with the written forwarding address on December 19, 2012.

The Act states that the landlord can retain a deposit if the tenant agrees in writing. Section 38(4) states:

> *A landlord may retain an amount from a security deposit or a pet damage deposit if,*

> *(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain* ***the amount*** *to pay a liability or obligation of the tenant, or*
>
> *(b) after the end of the tenancy, the director orders that the landlord may retain the amount*. (myemphasis)

I find that the "Acknowledgment" statement, upon which the landlord has relied to justify retaining the tenant's security deposit without obtaining an order to do so, does not qualify as a valid consent from the tenant, primarily because it does not specify an amount to be retained.

In addition I find that section 6(3) of the Act states that a term of an agreement is not enforceable if:

> a) the term is not consistent with the Act or Regulations,
>
> b) the term is unconscionable, or
>
> c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that the consent statement devised by the landlord and signed by the tenant was not expressed in a manner that clearly communicated the intent because an amount was omitted.

Moreover, while I do not agree with the tenant's position that the consent was rendered invalid as it was signed under duress, I find that the wording of the landlord's preamble incorrectly implied that the landlord had the authority under the Act to withhold the deposit at will, as illustrated in the portion excerpted below:

> *"As you did not provide the proper 30 day notice to end your tenancy and there was no Breach by the landlord to warrant ending the tenancy without full notice, your deposit will not be returned to you."*

For the reasons above, I find that the landlord did not have valid authority under the Act to retain the $650.00 security deposit and $150.00 pet damage deposit, despite the written acknowledgement statement signed by the parties.

Accordingly, I find that the tenant did not give the landlord valid written permission to keep the deposit, nor did the landlord make application for an order to keep the deposits.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days of the end of the tenancy

and receipt of the forwarding address, the landlord may not make a claim against the security deposit or pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenant's security deposit and pet damage deposits totalled $800.00 and that because the landlord failed to follow the Act in retaining the funds being held in trust for the tenant, the tenant is therefore entitled to compensation of double the deposit, amounting to $1,600.00.

Analysis: Monetary Claim in Damages

With respect to an Applicant's right to claim damages from another party, I find that section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

Section 32 of the Act states:

> *A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.*

However, I find that the mere existence of a pest infestation does not constitute proof that the landlord is in violation of section 32 of the Act and no determination needs to be made as to who is "to blame" for the source of infestation.

But there is no question that, once a landlord has been made aware of the presence of vermin, the landlord is responsible , under the Act, for alleviating an infestation through a qualified pest control contractor and must take effective action without undue delay.

I find that, if the landlord fails to take timely measures to ensure that pests in the rental are dealt with, then the landlord would be in violation of section 32 of the Act.

In this instance, I do not find that the landlord was in violation of the Act as there was sufficient proof to confirm that the landlord had utilized professional pest control experts on a regular basis and as frequently as necessary.

That being said, although I do not find any violation of the Act on the landlord's part, I must consider whether or not the landlord was in violation of the tenancy agreement as the tenant has alleged. The issue is whether the landlord's failure to disclose the relevant information about the rental unit being treated prior to the tenant's arrival and the landlord's failure to warn the tenants that the unit may likely be subject to follow-up treatments, constituted a breach.

I find that it appears that a material fact affecting the tenancy was intentionally withheld by the landlord to the detriment of the tenants, who were unfairly disadvantaged in their tenancy negotiations. I find that the landlord's decision not to reveal the potential condition issue, not only deprived the tenants of key information that would clearly be relevant to their willingness to sign the agreement, but also served to delay them in promptly reporting the re-infestation, because they were not familiar with the symptoms of a bedbug infestation and would have had no reason to be particularly vigilant. I find that, at the very least, the landlord was obligated to provide written material supplied by their own pest control contractors aimed at educating tenants.

Given the above, I find that there was a violation by the landlord of the terms of the tenancy agreement.

I find that the tenant's monetary claims for compensation for the costs of laundry successfully met all elements of the test for damages and the tenant is entitled to be compensated in the amount of $150.00 for the cost of laundering contaminated clothing and linens.

With respect to the tenant's claims for compensation for the costs of the storage, heat treatment and the discarded possessions, I find that these claims do not sufficiently satisfy element 4 of the test for damages because it was not shown that the tenant took reasonable steps to mitigate by trying to employ other less costly treatments, also proven to be effective.

Based on the evidence I find that the tenant is entitled to total compensation in the amount of $1,800.00 comprised of $1,300.00 refund of double the security deposit, $300.00 for double the pet damage deposit, $150.00 for cleaning costs and the $50.00 cost of the application.

I hereby issue a monetary order to the tenant for $1,800.00. This order must be served on the landlord in accordance with the Act and, if necessary, can be enforced through Small Claims Court. The remainder of the tenant's application is dismissed.

Conclusion

The tenant is granted a monetary order for the return of double the security and pet damage deposits and a portion of their monetary claim.

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: November 15, 2012.

Residential Tenancy Branch