



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and one of the landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of the security deposit and for compensation for damage or loss, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on January 1, 2011 as a 1 year fixed term tenancy and converted to a month to month tenancy on January 2, 2012 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$400.00 paid.

The parties agree the tenancy ended in mid September 2012 but did not agree on whether the rental unit was vacated on September 15 or September 16, 2012. The parties agree the landlord was provided with the tenant's forwarding address by the end dated of the tenancy.

Both parties provided into evidence a copy of the landlord's Security Damage Deposit Refund Calculation showing the landlord deducted funds from the security deposit for a broken window (\$100.00); cleaning (\$125.00); damage to walls and trim (\$40.00); re-keying (\$30.22); storage of bed bug infested crib (\$20.00); and replacement shower currents (\$38.06) leaving a balance of \$46.72.

The tenants confirmed they have received the landlord's cheque in the amount of \$46.72 but have not yet cashed the cheque. The landlord did not provide any testimony that would indicate the tenants were not able to cash this cheque.

The parties agree that the male tenant had verbally agreed with the landlord that the landlord could withhold \$100.00 from the security for the repairs to a broken window. The landlord submitted as well that they had agreed to allow the tenants to end the tenancy midmonth if they left the rental unit clean, but the tenants failed to leave the unit clean.

The tenants also seek compensation in the amount of \$145.60 for a bed bug inspection completed on July 24, 2012 and have provided a copy of an invoice from the service provider. The tenants submit that the day before they went on vacation they thought they might have bed bugs.

The tenants testified that because they had felt the landlord had failed to deal with other pest control problems during the tenancy that they wanted to be sure they had bed bugs before they advised the landlord. They submit they hired a service provider who, after completion of canine inspection determined there were bed bug treatments.

The parties agree that the tenants then informed the landlord of the infestation; that the landlord followed through with treatment while the tenants were away for a 3 week vacation and that the service provider completed a follow up inspection after the tenants returned from vacation and they have not had a bed bug problem since.

The tenants also confirm that they never did seek reimbursement from the landlord until they filed this Application.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit less any mutually agreed upon amounts or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of the parties I find the tenancy ended on or before September 16, 2012 and that the tenants had provided the landlords with their forwarding address prior to this date and as such the landlords had until October 1, 2012 to either return the

deposit less the agreed upon \$100.00 or file an Application for Dispute Resolution seeking to claim against the deposit.

As the landlords had not returned the full deposit less the agreed upon \$100.00 or filed an Application claiming against the deposit on or before October 1, 2012 I find the landlords failed to comply with Section 38(1) and the tenants are entitled to double the amount of the balance of the security deposit less the agreed upon \$100.00 or \$600.00.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

While I accept it is the landlords' responsibility to deal with pest control issues in a rental unit, unless the landlords can provide evidence that the issues are a result of the tenants' actions, in the case before me the landlords were never made aware of the tenants' concerns that there may be bed bugs in the rental unit.

From the testimony of both parties the landlords dealt with the bed bug problem as soon as they were made aware of the problem and as such I find the landlords have complied with all of their obligations under Section 32 and did so in a timely manner. As such, I find the tenants have failed to establish they have suffered a loss that is the result of a violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of their Application.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$600.00** comprised of double the amount of the balance of the security deposit held.

As the tenants still have a cheque from the landlord in the amount of \$46.72 I find that this amount represents partial satisfaction of this claim and I order the tenants may cash this cheque. However, should the tenants not be successful in cashing this cheque then this amount must be considered unpaid.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced 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: January 15, 2013

