



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNSD
Tenant MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant's agent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order to retain the security deposit, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on June 14, 2012 for a 6 month fixed term tenancy beginning July 1, 2012 for the monthly rent of \$2,300.00 due on the 1st of each month with a security deposit of \$1,150.00 paid. The parties agree the tenancy ended on December 31, 2012.

The parties also agreed the tenant provided the landlord with her forwarding address on February 18, 2013. The landlord acknowledged that a move out condition inspection was not completed when this tenant moved out of the rental unit. The landlord submitted her Application for Dispute Resolution on March 1, 2013.

The landlord seeks to retain the security deposit for costs and lost revenue incurred because of a bedbug infestation the landlord attributes to the tenant. The landlord submits that construction of the residential property was completed in November

2011 and that there had been no problems in the furnished rental unit until after this tenant vacated the property.

The landlord submits that when a new tenant moved into the rental unit on January 1, 2013 his son reported getting bites within the first 2 day of the tenancy and that after two weeks these new tenants found bedbugs on the bed in the den. The new tenants reported this to the landlord on January 14, 2013.

The landlord submits that “according to a study by Susan C. Jones, Ph.D it takes at least 21 days for bedbugs to get into a cycle. With the amount of bedbugs there, it would be at lease a few months.” The landlord did not provide a copy of this study nor did the landlord provide any record from the pest control providers as to the number of bedbugs found or their thoughts on when the infestation occurred.

As a result the landlord submits they had the rental unit treated (\$100.00) and was forced to remove and replace a mattress and box spring (\$248.00); and bedding (\$227.21). The landlord also submits the new tenant was reimbursed \$709.67 for rent for the period of January 16 – 25, 2013.

Analysis

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 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Section 35 of the *Act* stipulates that the landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The Section goes on to say the landlord must offer the tenant at least 2 opportunities to complete the inspection.

As per the landlord's testimony a condition inspection was not completed when the tenant vacated the rental property and as such the landlord has no evidence as to the condition of the rental unit at the time the tenant vacated it. Further, despite the landlord quoting a study regarding bedbugs they have provided no direct evidence to establish that the infestation was caused by this tenant.

As such, I find the landlord has failed to establish that they have suffered a loss as the result of a violation of the Act, regulation or tenancy agreement on the part of the tenant. I dismiss the landlord's Application in its entirety.

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 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.

As per the tenant's agent's testimony that the tenant provided the landlord with her forwarding address on February 18, 2013 and the fact the landlord submitted an Application for Dispute Resolution to retain the security deposit on March 1, 2013 I find the landlord has complied with Section 38(1) and is not required to provide double the amount of the deposit to the tenant.

Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,200.00** comprised of \$1,150.00 security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: May 31, 2013

Residential Tenancy Branch

