



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MND, FF.*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, cost of items taken from the rental unit, cleaning and the filing fee and to retain the security deposit in satisfaction of the claim. The tenant applied for the return of double the security deposit, for the return of rent and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, cost of items taken from the rental unit, cleaning and the filing fee? Is the tenant entitled to the return of double the security deposit, rent and the filing fee?

Background and Evidence

The tenancy started on June 01, 2013 and ended on August 01, 2013. The monthly rent was \$475.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$237.50.

The rental unit consists of shared furnished accommodation in the basement of the landlord's home. The landlord lives upstairs. The basement has two bedrooms which are rented out separately. The occupants of the basement share a kitchen and a washroom.

At the start of the tenancy, the occupant of the other bedroom in the basement had just moved out. The landlord stated that she found a tenant for this room for August 01 and therefore this room remained unoccupied for the months of June and July. The tenant agreed that she had the basement to herself but stated that due to problems she lived elsewhere for most of the tenancy.

On June 27, 2013, the tenant informed the landlord that there were bed bugs in the rental unit. The landlord stated that she was surprised because this had never happened before. The next day, the landlord inspected the unit and did not find any trace of bed bugs. The landlord requested her brother, who is a home inspector, to inspect the unit. He did so on June 29 and reported that there was no trace of bed bugs. The landlord filed a statement from him confirming the same.

On July 07, 2013, the tenant gave the landlord written notice to end the tenancy effective July 31, 2013. The tenant stated that on July 30, she returned the keys to the landlord by depositing them in the mailbox of the upper level. The tenant then contradicted her own testimony and stated that she met with the landlord at the unit on July 31 to return the keys to her and to get the security deposit. The landlord stated that the keys were not returned to her.

The landlord stated that a mattress that was provided to the tenant was missing at the end of the tenancy. The tenant stated that the landlord instructed her to put the mattress out with a sign saying that it was free, because it was ridden with bed bugs. The tenant stated that the landlord wrote up the sign. The landlord denied having asked the tenant to dispose of the mattress. The tenant stated that she put the mattress out on the curb herself on July 30 along with the landlord's sign indicating that it was free.

Later during the hearing, the tenant contradicted her own testimony about the mattress and stated that her grandmother put the mattress out. The tenant also stated earlier that she met the landlord on July 31, to return the keys but changed the date to July 30 when testifying about the mattress. The tenant's testimony was inconsistent and she was unable to provide accurate information about most issues including the amount of rent and security deposit paid.

The tenant agreed that the unit was furnished with a television set and stated that she placed it outside in the yard because it was infested with bed bugs.

The landlord stated that she advertised the availability of the unit but did not find a tenant for August 01, 2013. The landlord is claiming the cost of the advertisement, but did not provide any evidence to support her claim for \$58.00.

The landlord stated that her tenant for the second bedroom in the suite decided to move into the tenant's bedroom on August 01, 2013 and therefore the second bedroom was vacant for August and the landlord suffered a loss of income for that month. A new tenant for the second bedroom was found for September 01, 2013.

The landlord also stated that tenant left the unit without cleaning it and left behind a lot of items that were of little to no value. The landlord had to remove and dispose of these items. The new tenant agreed to clean for a rent deduction of \$50.00.

The landlord is claiming the following:

1.	Loss of income for August 2013	\$475.00
2.	Loss of television	\$100.00
3.	Loss of mattress	\$350.00
4.	Cleaning	\$50.00
5.	Replace lock	\$25.00
6.	Replace blinds	\$25.00
7.	Cost of advertisement	\$58.00
8.	Filing Fee	\$50.00
	Total	\$1,133.00

The tenant provided her forwarding address to the landlord on July 09, 2013 and moved out on August 01, 2013. When the tenant did not receive her security deposit by August 19, she filed this application for the return of double the security deposit.

The tenant is also claiming the return of rent for July because the unit was allegedly uninhabitable due to the presence of bed bugs. The tenant provided a portion of a receipt for the purchase of a prescribed cream which she stated was for bites to her arms. The landlord stated that bed bugs were not found even after the tenant moved out. The new tenant wrote a statement confirming the absence of bed bugs in the unit.

The tenant filed a copy of a black and white photograph that shows what appears to be a single bug on a white background. The photograph is not clear and I am unable to determine the size of the alleged bug because there is no frame of reference in the photograph. The tenant testified that the unit was infested with bugs but a single photograph of a single bug is the only evidence that she filed to support her testimony.

The tenant is claiming the following:

1.	Rent for July	\$450.00
2.	Return of double security deposit	\$550.00
3.	Filing fee	\$50.00
	Total	\$1,050.00

The tenant's total claim is \$1,500.00. During the hearing, the tenant stated the difference of \$450.00 was for the cost of replacing her personal items that were infested and had to be thrown away. The tenant provided a list of items that she stated she wanted to be compensated for. The list includes shoes, clothes, purse and CD player.

Analysis

Landlord's application:

1. Loss of income for August 2013 - \$475.00

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, rent was due on the first of the month and the tenant gave notice on July 07, 2013, to end the tenancy on July 31, 2013. Therefore pursuant to section 45, the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of August 2013.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss. Based on the evidence in front of me, I find that the landlord made reasonable efforts to find a tenant but was unsuccessful. Even though the occupant of the second bedroom moved into the tenant's bedroom, the landlord suffered a loss of income from the second bedroom, due to the tenant's inadequate notice to end tenancy. Accordingly, I find that the landlord is entitled to **\$475.00**, which is the loss that she suffered.

2. Loss of television - \$100.00

3. Loss of mattress - \$350.00

Based on the testimony, photographs and statements filed by both parties, I find that the tenant has not proven that the rental unit was infested with bedbugs. A single unclear photograph portraying what appears to be a single bug on a white background is not sufficient to prove that there was an infestation inside the rental unit. The tenant agreed that she put the landlord's television set outside in the yard thereby ruining it. Both parties agreed that the mattress was missing from the unit at the end of the tenancy. The tenant's testimony about the mattress was contradictory and therefore I find that on a balance of probabilities, it is more likely than not that the tenant removed the mattress from the rental unit of her own free will and not at the request of the landlord.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the above, I find it appropriate to award the landlord a nominal award of a total of \$200.00 for the loss of the television and the mattress.

4. Cleaning - \$50.00

Based on the photographs of the unit, filed into evidence by the tenant, I find that the unit was left in a condition that required cleaning and removal of items left behind. Accordingly I award the landlord her claim of \$50.00.

5. Replace lock - \$25.00

The tenant testified that she returned the keys on July 30, by putting them in the landlord's mailbox and then contradicted her own testimony and stated that she met the landlord on July 31, to return the keys. Based on the tenant's testimony, I find that it is more likely than not that the tenant did not return the keys to the landlord and I award the landlord her claim of \$25.00 to replace the lock.

6. Replace blind - \$25.00

7. Cost of advertisement - \$58.00

The landlord did not provide adequate evidence to support these claims and therefore I dismiss them.

8. Filing fee - \$50.00

.The landlord has proven a major portion of her claim and is therefore entitled to the recovery of the filing fee.

Overall the landlord has established a claim of:

1.	Loss of income for August 2013	\$475.00
2.	Loss of television	\$0.00
3.	Loss of mattress	\$200.00
4.	Cleaning	\$50.00
5.	Replace lock	\$25.00
6.	Replace blinds	\$0.00
7.	Cost of advertisement	\$0.00
8.	Filing Fee	\$50.00
	Total	\$800.00

Tenant's application:

1. Rent for July - \$450.00

The tenant's rent was \$475.00 but she has made a claim for \$450.00. In any event, the tenant and/or her belongings occupied the unit for the month of July and therefore rent is owed. Even though the tenant argued that rent must be returned to her because of the bed bug infestation, I find that the tenant has not proven the existence of the alleged infestation. Accordingly, the tenant's claim for \$450.00 is dismissed.

2. Return of double security deposit - \$550.00

The tenant paid a security deposit of \$237.50 but is claiming \$550.00 for double the security deposit.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must return double the amount of the security deposit.

In this case, the tenancy ended on August 01, 2013 and the tenant provided the landlord with her forwarding address in writing prior to moving out. The landlord failed to return the security deposit or file an application to retain all or a portion of the deposit within the legislated time frame of 15 days. Therefore the tenant is entitled to the return of double the security deposit. The tenant paid \$237.00 as a security deposit and therefore is entitled to \$475.00.

3. Filing fee - \$50.00

Since the tenant has proven a portion of her case, I award her the return of the filing fee. The tenant has made a claim towards the cost of the items that were ruined by the alleged bed bug infestation. As noted above, I find that the tenant has not proven the existence of an infestation and therefore her claim for \$450.00 is dismissed.

Overall the tenant has established a claim as follows:

1.	Rent for July	\$0.00
2.	Return of double security deposit	\$475.00
3.	Filing fee	\$50.00
	Total	\$525.00

The landlord has established a claim of \$800.00 and the tenant has established a claim of \$525.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$275.00 which consists of the difference between the established entitlements of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$275.00**.

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 27, 2013

Residential Tenancy Branch

