

A matter regarding CAVALIER MANOR HOLDINGS CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MNSD MNDC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 44, 45 and 67 as compensation for breach of a fixed term lease and other damages;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed she received the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant had a fixed term lease and moved out before the end of the term. Is the landlord now entitled to compensation for rental loss, for other damages and to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant had lived in the same building for a year and moved to the subject suite in March 2013 on a fixed term lease expiring on April 30, 2014. Rent was \$1080 a month and a security deposit of \$540 was paid on November 15, 2012. The tenant did not remember signing the lease but agreed it was her signature but it was lighter on the copy because it had been done in red ink.

On August 30, 2013, the landlord said the tenant gave a 30 day notice to end her tenancy stating she would vacate by September 14, 2013 to travel in Europe. He said on September 3, 2013, she informed them that there were bedbugs in her unit and they called pest control. On September 4, 2013, the landlord said that the pest control company sprayed and found one bedbug on the bed but scheduled a second treatment on September 16, 2013 as part of their procedure. Meanwhile, on September 5, 2013, the tenant moved her box-spring and mattress into the hallway of the building and on September 6, 2013, the landlord had them taken to landfill. On September 6, 2013, the tenant stopped payment on her automatic withdrawal for September rent. On September 18, 2013, the landlord said the tenant returned the keys but did not agree to forfeit her security deposit, did not

provide a forwarding address and did not sign the move-out condition inspection report. She left furniture behind and some cleaning to be done and said she would return to get her bike from storage; she still has not picked up her bike and he requests an Order that she do so.

The tenant said she had verbal agreements with the landlord that she would get her security deposit back and not have to pay rent for September because of the bed bug issue. She said initially on August 15, 2013, she told the landlord she would have to leave because her Mom was ill and agreed they could keep her security deposit and she would pay September rent. However, in the course of her job as nurse, she went into the hospital on September 2, 2013 covered in millions of bites; the doctor said they were bed bug bites. On checking at home, she found about 10 bed bugs when she pulled out the bed. She showed them to the landlord and he scheduled pest control. Then as she started packing she saw bed bugs all over, in the closet, her clothes, and the storage area. She suggested heat treatment to get rid of the bugs but the landlord declined because of expense and not wanting other tenants in the building to know about this. She was going to her daughter's home and her son-in-law, who did not want the bugs coming to their home, arranged for her belongings to be heat treated in a truck in her old landlord's parking lot because this landlord did not want this treatment to be known. It cost \$1200 and the landlord agreed with her that she would get her security deposit back and could forget about September's rent because they felt sorry for her predicament. The landlord denies making these verbal agreements but said they would have refunded her security deposit if she had paid September's rent.

The landlord claims as follows:

1. \$60: suite cleaning, mainly the stove and refrigerator and mopping the floors. The tenant said she did clean but not underneath the old appliances as she did not know how to move them out. She did not mop the floors for she was told that would have to be done after the second pest control treatment anyway. The landlord said it took a couple of hours of cleaning.
2. \$472.50: Pest Control service for bed bugs. The two managers gave evidence that this is the only suite that had bedbugs, that the Pest Control company found only one bed bug in the unit and they have never had any reports or instance of bed bugs in this building during the many years they have managed there. The tenant was unable to offer any evidence of bug problems in the building to refute this but said she had a model suite and the landlord even wanted to put a photograph of it on his website. The tenant had no explanation for the bugs' origin; she said they seemed to come through the walls.
3. \$80: to remove a box spring and mattress discarded by the tenant.
4. \$1080 for September rent plus \$25 NSF charge (total \$1 105)

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on the landlord, as applicant, to prove on a balance of probabilities his claim. I find there was a fixed term lease and the tenant breached the lease but the landlord is claiming only one month's rent. I find the tenant gave written notice on August 30, 2013 and vacated about the middle of September without paying rent for September. Section 26 of the Act provides that a tenant must pay rent when due whether or not the landlord fulfills his obligations under the Act. I find rent for September was due on September 1st so the landlord is entitled to recover \$1080 + \$25 for unpaid rent plus NSF fee for September. Although the tenant claims she had verbal agreements with the landlord to waive September rent, I find she has provided insufficient evidence to support her allegations and the landlord denies such an agreement.

In respect to the \$60 claim for cleaning, I find the evidence is that the most of this claim was for cleaning under appliances which did not have rollers and the tenant was not instructed how to pull them out. According to the Residential Tenancy Policy Guideline 1-3, tenants are not held responsible for cleaning under such appliances. The tenant did admit that she did not mop the floors because the pest control company was coming so I find the landlord entitled to \$20 of the claim for mopping the floors.

In respect to the claim for pest control services, the onus is on the landlord to prove on a balance of probabilities that the tenant or her guests caused the problem. I find the preponderance of the evidence is that the bed bugs were somehow introduced to this unit by the tenant or tenant's guests. I find the landlord's evidence credible on this point as their sworn evidence is that there have been no other reports or incidences of bed bugs in the building during their 12-20 years of service there and the pest control invoice shows they treated only this unit. The tenant was unable to provide any evidence to rebut the landlord's sworn testimony. I find the landlord entitled to recover \$472.50 for pest control services.

I find the landlord incurred charges of \$80 as claimed to remove the tenant's old mattress and box spring to the landfill so I find them entitled to recover this \$80.

Although the tenant contended that she gave a lot of furniture to the landlord, I find there was no written agreement for compensation for this and the landlord said he just agreed that she could leave it in case anyone wanted it. He said she had tried to sell it without success. He asks for an Order that she remove her bike and she said she would do so on the weekend.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Cleaning –allowed portion	20.00
Pest Control services	472.50
Cost to remove items to landfill	80.00
Unpaid rent September plus NSF charge	1105.00
Filing fee	50.00
Less security deposit (no interest 2009-14)	-540.00
Total monetary order to landlord	1187.50

I HEREBY ORDER that the tenant remove her bike from the landlord's property by January 24, 2014 or risk incurring storage charges.

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, 2014

Residential Tenancy Branch