



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Orchard Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNC, CNR, MNR, MNDC, RR, FF

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for cause and a 10 Day Notice to End Tenancy for unpaid rent; for a Monetary Order for the cost of emergency repairs; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. The landlord served the tenant with part of their

evidence the reminder of the landlord's evidence was served late to this office and the tenant and will not be considered at this hearing.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession. The tenant withdraws all aspects of her application with the exception of her claim for a Monetary Order money owed or compensation for damage or loss and the filing fee.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on November 01, 2012. Rent for this unit was \$1,050.00 due on the 1st of each month. The tenant paid a security deposit of \$525.00 on November 01, 2012.

The tenant's application

The tenant testifies that she rented the top floor of a two story trailer. Around January or February, 2013 she saw the lower tenants removing some furniture from their unit and putting it in the common area. The tenant testifies that later these same tenants removed a couch a chair and a bed from their unit. The tenant saw that the bed had bedbugs in it and when the tenant approached the landlord to remove these items the landlord said it was not his problem. The tenant testifies that they kept checking their own belongings for any sign of bedbugs and found some in October, 2013. The tenant

testifies that she had to do many extra loads of laundry to prevent an infestation and has calculated this to have been 10 loads a week for 16 weeks at \$2.00 a load. The tenant testifies that she has provided some receipts for the use of the laundry in evidence and seeks to recover \$320.00 from the landlord.

The tenant further seeks to recover \$75.00 for 25 loads of laundry when washing and drying duvets and bedding. The tenant testifies that eventually they had to get rid of a lot of their stuff due to the bedbugs.

The tenant seeks to recover \$307.60 for the cost of purchasing plastic bins to protect their belongings. The tenant claims she purchased 30 bins and has provide receipts to a total amount of \$167.72. The tenant seeks to recover \$60.00 from the landlord for having to be out of her unit for two days while the pest control company first came to spray for bugs. The tenant seeks to recover a further \$60.00 for having to be out of the unit for two days during the second spray treatment for bugs.

The tenant testifies that she used extra fuel going to and from the laundry. The tenant testifies that this is located about five kilometers from home and the tenant had to make multiply trips. The tenant has provided a gas receipt in evince which also contains other items such as cigarettes. The tenant testifies that she calculated the additional gas used from her normal usage and seeks to recover \$60.00.

The tenant testifies that she had to place all her belongings in plastic bags before storing them in the plastic bins. The tenant seeks to recover \$35.00 for two boxes of plastic bags. However, the tenant has not provided a receipt in evidence. The tenant testifies that all their belongings were placed in bags and were stored for two weeks during the first and second spraying of the unit. The tenant seeks compensation for this in the form of a rent reduction of \$550.00.

The tenant has sought the cost of purchasing bed bags of \$532.00 but has since withdrawn this from her claim. The tenant also sought \$60.00 for three loads of clothing and beds thrown out due to bedbugs but also withdraws this from her claim.

The tenant testifies that they had to throw out two of her children's mattresses when they found bedbugs in the mattresses. The tenant testifies that these have not yet been replaced and the tenant seeks compensation of \$200.00 for these mattresses.

The tenant testifies that she had to purchase five pillows to use at a friend's house when they went there to stay after finding bedbugs in their unit. The tenant seeks to recover the cost of these pillows and cases and has provided a receipt for \$80.50.

The landlord disputes the tenant's claim. The landlord testifies that the tenant has claimed in her documentation that the bedbugs were noticed with the lower tenants two weeks after she moved into her unit. However the lower tenants did not move into their unit until 30 days later. When the lower tenants removed furniture from their unit the landlord took it to the dump for them. However, prior to that, the tenant and the lower tenants would sit on the couch and smoke together in the common area and there was no mention of bedbugs then. The landlord testifies that the first they heard of the tenant having bedbugs was in October, 2013. The landlord testifies that they immediately got hold of the pest control company who arranged to do a site visit and then returned to spray both units. This company then returned two weeks later to spray again and have since followed up with further inspections and found no bedbugs present at this time.

The tenant was given information from the pest control company which advised the tenant to bag her belongings into plastic bags. The tenant did not need to purchase plastic boxes as well. The landlord testifies that they supplied the tenant with garbage bags and a storage bin for her belongings to go into. The landlord agrees this storage bin did not come until the evening before the first treatment but the tenant had ample time to prepare her unit for spraying but was not ready when the pest control company arrived the next morning. The pest control company had to return again to spray and by

then the landlords had paid the lower tenants to help this tenant remove her belongings into the storage bin.

The landlord testifies that the tenant was only required to be out of the unit for 24 hours for each spray treatment and yet the tenant is claiming for four days. The landlord testifies that the laundry is less than one kilometer from the tenant's unit and not five as suggested by the tenant. The landlord also disputes the receipts provided as these are a store receipt and not an ATM as they show an amount with change which an ATM does not provide.

The landlord disputes the tenant's claim for gas and states the receipt shows a gas station that is 14 kilometres away from the tenant's unit and also shows the tenant bought cigarettes. The landlord disputes the tenant's claim for \$500.00 for two weeks of having her belongings packed up. The landlord testifies that there was no need for that. The landlord disputes the tenant's claim for pillows. The landlord testifies that the pest control company state that pillows can be washed and dried and there was no need for the tenant to purchase new ones.

The landlord testifies that the tenant was never threatened or intimidated. The landlords only served the tenant with the 10 Day Notice when rent was not paid for November as they are entitled to do. The landlord testifies that their evidence shows the pest control company came out on October 15, they returned to spray on October 25 but as the tenant was not ready they had to come back on October 31, 2013. The second spray treatment was done on November 15, 2013. The pest control company had to spray both units and found bedbugs in both units so were unable to tell where the bedbugs originated from.

The landlord testifies that the tenant had sent them an e-mail saying she had moved out on October 31, 2013 and had left the keys in the mailbox and that the tenant would not be returning to clean. This was dated December 26 or 27, 2013. The landlord testifies that no keys were found in the mailbox but they presumed the tenant had left on that

date. The landlord testifies they tried to contact the tenant to get her to sign a Mutual Agreement to End Tenancy but were unsuccessful.

The tenant testifies that she went to stay at friends when her unit was being sprayed and did email the landlord to let them know she was not at the unit. The tenant testifies that the rest of her possessions were still in the unit and remained bagged up. The tenant testifies that she did not end the tenancy until November 20, 2013 although did not return to live in the unit. The tenant testifies that she could not get her unit ready to spray on time as the landlords did not provide a storage bin until the evening before the pest control company came. The tenant testifies that all her belongings were removed by November 20, 2013.

The tenant testifies that she did not have any proof that there were bedbugs until July, 2013 when the lower tenant confirmed they had bedbugs but had not informed the landlord. The tenant asks the landlord is he is saying the tenant did not inform the landlord in July about bedbugs. The landlord responds that the tenant did not talk to them about bedbugs until October, 2013.

The landlord's application

The landlord testifies that the tenant failed to pay rent for November and a 10 Day Notice was issued to the tenant on November 02, 2013 by posting it to the tenant's door. This Notice informed the tenant that she owed rent of \$1,050.00 which was due on November 01, 2013. The landlord testifies that at that time they had not received the e-mail from the tenant stating she had left the unit on October 31, 2013 and returned the keys. The landlord therefore seeks to recover rent for November of \$1,050.00.

The landlord also seeks to recover unpaid rent for December, 2013 of \$1,050.00. The landlord refers to the e-mail sent to the landlord in December by the tenant who informed the landlords that the tenant was not returning to the unit after October 31, 2013 and had returned the keys. The landlord testifies that no keys had been returned

and although the tenant had left some belongings in the unit the landlord did not know about this until December and so could not re-rent the unit for December, 2013.

The landlord also seeks an Order to permit the landlord to keep the security deposit of \$525.00 to offset against the unpaid rent.

The tenant disputes the landlords claim for unpaid rent and testifies that she could not pay the rent due to the extra expenses incurred dealing with the bedbug issue and to prepare for spraying. The tenant testifies that she found alternative low cost housing and so moved out completely on November 20, 2013.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for compensation; the tenant has the burden of proof in this matter that the lower tenants were responsible for bringing bedbugs into the building. The tenant has provided no evidence to support this claim. The tenant's testimony in which the tenant stated that the lower tenants told her this and that she saw bedbugs on a bed they removed from their unit is simply hearsay. Without meeting the burden of proof I am unable to determine who was responsible for the bedbugs. I further find there is no evidence to support the tenant's claim that she informed the landlord in July about seeing bedbugs on the lower tenants' furniture and when the landlord contradicts the tenant's testimony it is a matter of being one persons word against that of the other and the burden of proof is not met.

Consequently, I am satisfied that the landlord was only informed in October, 2013 about bedbugs and then acted quickly to contact the pest control company to arrange an inspection and subsequent spray treatments. The tenant was given notice to put her belongings in bags and prepare her unit for treatment. The landlord did provide a storage bin for the tenant's use which they are not required to do but did so anyways to help the tenant.

I find that the tenants claim for compensation of \$2,100.00 for loss of quiet enjoyment of her unit is dismissed. The tenant has provided no evidence showing bites, infection or skin irritations, such as a letter from their doctor. The tenant's claim for \$500.00 for stress due to threats of eviction and intimidation is also dismissed. A landlord is entitled to serve a tenant with a 10 Day Notice to End Tenancy if rent remains unpaid by the tenant. The tenant has provided no evidence that any further Notices to End Tenancy were issued.

The tenant has the burden of proof to show the actual costs incurred for her claim for additional laundry and the tenant has failed to do so. I find the receipts provided marked laundry does not show that these amounts were used for the laundry. Consequently, the tenants claim for \$320.00 and \$75.00 is dismissed.

The tenant has claimed \$307.60 for storage bins however the receipts provided are for \$167.72. I am not satisfied that the tenant needed to purchase these bins for her belongings as the information from the pest control company states that items should be placed in plastic bags. Therefore, I find if the tenant wanted her belongings placed in plastic bins then the tenant must bear this cost herself. This section of the tenant's claim is dismissed.

With regard to the tenant's claim for 30.00 per day for four days to leave the house while spraying takes place. Again the information from the pest control company specifies 24 hours and not two days for being out of the home while spray treatments take place. I therefore find the tenant is entitled to **\$30.00** for the first spray treatment. I further find as the second spray treatment did not take place until November 15, 2013 and the tenant agrees she was not living in the unit at that time and only her belongings were there then the tenant would not be entitled to further compensation for having to vacate the unit for one day.

The tenant has claimed \$60.00 for extra fuel for going to the laundry. However the tenant has not established her claim that she did extra laundry at the laundry and therefore her claim for fuel must also be dismissed. Furthermore, I have reservations about the authenticity of the receipts provided by the tenant for fuel costs.

The tenant seeks \$35.00 for garbage bags. However the landlord testifies that they provided garbage bags to the tenant. The tenant has failed to provide a receipt for the garbage bags and this section of her claim is therefore dismissed.

The tenant seeks \$550.00 in compensation for having her belongings in bags for two weeks between treatments. I am not satisfied that the tenant was required to keep her belongings in bags for this period and furthermore I am not satisfied that the tenant was still living at the unit between treatments and therefore could have removed her bags to alternative accommodation. This section of the tenant's claim is dismissed.

The tenant seeks \$200.00 for the cost of two mattresses she had to throw out and \$80.60 for pillows purchased while staying at a friend's home. If a spray treatment for bedbugs is successful then the furniture and bedding is also sprayed and treated or can be washed and dried on a high heat. Consequently, there is no requirement to throw away the mattresses or replace the pillows. While I understand that a tenant may want to discard her mattresses and pillows; however, if she chooses to do so then the tenant cannot hold the landlord responsible for the cost to replace them. This section of the tenant's claim is also dismissed.

With regard to the landlord's claim for unpaid rent; section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the evidence before me that the tenant did indicate that she was not returning to the rental unit on October 31, 2013 and returned the keys. The tenant has testified at the hearing that she did not remove her belongings until November 20, 2013 and remained in possession of the rental unit until that time. Regardless of when the tenant vacated the unit the landlord would still be entitled to collect rent for November, 2013 and therefore it is my decision that the landlord is entitled to recover **\$1,050.00** from the tenant pursuant to s. 67 of the *Act*.

As the tenant did not inform the landlord of her intention to not return to the unit after October 31, 2013 until December, 2013 I find the landlord was not able to re-rent the unit and therefore suffered a loss of rent for December, 2013. Consequently, it is my decision that the landlord is entitled to recover **\$1,050.00** from the tenant for a loss of rent for December, 2013 pursuant to s. 67 of the *Act*.

I order the landlord to keep the security deposit of **\$525.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's claim for unpaid rent.

As the tenant has been awarded the amount of \$30.00 I have offset this amount against the landlord's monetary claim. I further find the landlord is entitled to recover the **\$50.00** filing fee paid for their application pursuant to s. 72(1) of the *Act*. The tenant must bear the cost of filing her own application. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$2,100.00
Tenants monetary award	(-\$30.00)
Less security deposit	(-\$525.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,595.00

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. The tenant's monetary award of \$30.00 has been offset against the landlord's monetary award.

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1,595.00. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial Court 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 09, 2014

Residential Tenancy Branch

