



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL MNSD MNDC

Preliminary Issues

The Landlord testified that the Tenant vacated the property and she regained possession on February 27, 2014 when the keys were returned. Therefore, she was withdrawing their request for an Order of Possession.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 30, 2014, by the Landlords to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to keep the security deposit in satisfaction of their claim.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed receipt of the Landlord's evidence; however, she did not have the evidence with her during this proceeding. The Landlord affirmed that she served the Tenant with the exact same evidence that was provided to the Residential Tenancy Branch (RTB).

The Landlord stated that she did not receive evidence from the Tenant. The Tenant confirmed that she sent evidence to the RTB but she did not serve the Landlord with copies of her evidence.

Rule 4.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates that a respondent must serve the RTB and the other party with any evidence they wish to have considered. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlords have not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the burden of proof to obtain a Monetary Order in accordance with sections 7 and 67 of the *Residential Tenancy Act*?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on November 15, 2013. The Tenant was required to pay rent of \$1,000.00 on the first of each month and on October 25, 2013 the Tenant paid \$500.00 as the security deposit. The Tenant was served a 2 Month Notice to end tenancy for landlord's use on December 18, 2013, and vacated the property in accordance with the Notice. The Tenant had a family member attend the move out walk through and return the keys to the Landlord on February 27, 2014.

The Landlord testified that they are seeking \$236.25 to cover the cost of the pest exterminator. The Landlord stated that they allowed the Tenant to move into the unit on November 14, 2013, and the next day she checked in with the Tenant to see how the move went. It was during that conversation that the Tenant told her that she had had a sewage flood in her previous rental unit that caused lots of damage to her possessions. She said the Tenant told her that a friend told her not to tell the Landlords about the flood and not to tell them that she had had bugs in her previous place. It was also during that conversation that the Tenant said there were bugs in this rental unit.

The Landlord stated that she asked the Tenant to show her where the bugs were but they could not see any. The Landlord arranged for her contractor friend to come and check inside the unit for bugs and he could not see any at that time. The Landlord arranged for another contractor who was not a friend, to check out the unit.

The Landlord submitted that on December 22, 2013 she called the Tenant's friend to ask them to provide the Tenant support with the eviction and it was during that conversation that the friend told the Landlord that there were bugs in the basement suite and it was her responsibility as landlord to treat the bugs. The Landlord stated that they arranged for a pest exterminator to check the unit the next day.

The Landlord pointed to her evidence which included an invoice from the pest control company dated December 23, 2013, for \$236.25. The invoice indicates they found and treated the unit for "moisture ants" inside the unit. The Landlord said the exterminator told her it was unusual to find moisture ants during the winter months. They also indicated that there were so many possessions in the unit that they were unsure if they

were able to treat the unit effectively. They had the unit rechecked on March 1, 2014, after the Tenant had moved out and there were no ants found at that time.

The Landlord pointed to the rest of her evidence which included a statement from the previous tenant indicating the unit was clean and bug free and a statement from the Tenants previous landlord confirming the sewage flood.

The Tenant testified that the Landlord did not come to see her on November 15, 2013; rather, the Landlord came on November 16, 2013 as she had scheduled her contractor friend to do some work inside the unit that day. The Tenant said she showed both of them the bugs and she was told it was just dirt or black fluff and not bugs. She said that when she first told the Landlord about the bugs the Landlord became really upset and swore saying she could not deal with "f... bugs" and she left. The Tenant stated that the Landlord was under a lot of stress because her baby was sick and needed surgery.

The Tenant testified that her previous rental unit was a half duplex with a main floor and basement. The sewage flood occurred in July 2013 when the main sewage pipe burst out in the street. Water and sewage came into the basement through the toilet, tub and drain and flooded areas of the basement. The flood water was about two feet deep in the bathroom and extended out into the hallway and down into a portion of the spare bedroom and furnace room. The Tenant argued that most of her possessions were upstairs, which is where she lived, so the only things that were ruined were her towels and stuff that was inside the downstairs bathroom. She disputed the Landlord's testimony and argued that she never told the Landlord she had bugs in her previous rental unit.

The Tenant argued that the rental unit had not been cleaned properly before she moved in. She stated that the cupboards had crumbs and sugar in them and that she had to wipe everything out, which is how she found the bugs. She stated that she never even got to unpack as she moved in November 14, 2013, found the bugs, and was issued an eviction notice on December 18, 2013.

The Tenant stated that the Landlord was very upset saying they were not going to deal with this because she was bleeding the Landlords dry. The Landlord was upset because they had to fix the ceiling fan and the heating vent which fell on the Tenant's head.

The Landlord's boyfriend came to see how she was doing on December 13, 2013 and told her it was not working out and then she was evicted on December 18, 2013. She vacated the unit by February 22, 2014 and arranged for her uncle to attend to do the walk through on February 27, 2014, and return the keys and cable equipment.

In closing, the Tenant requested that the Landlord return her security deposit to the forwarding address she provided during her testimony.

The Landlord argued that the bugs came and left with the Tenant as there have been no bugs since the Tenant moved out, which is why they are claiming the exterminator costs.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

The *Residential Tenancy Policy Guideline # 1* provides that a landlord is generally responsible for major projects such as tree cutting, pruning, and insect control.

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the absence of a move-in condition inspection report form, the only evidence before me as to the condition of the rental unit at the onset of this tenancy was the undisputed testimony from the Tenant that indicated the cupboards had not been wiped out and she had found crumbs and sugar in them.

Notwithstanding the Landlord's belief that ants were brought into the rental unit when the Tenant moved in and they left when the Tenant moved out, I find the evidence suggests that the ants left or were remediated when the pest control company treated the unit.

Given the ability of ants to travel and migrate towards food, I cannot determine with any certainty whether the ants were resident at the beginning of the tenancy or they came with the Tenant's possessions.

Based on the above, there is no evidence before me that would indicate the Tenant breached the Act, regulation or tenancy agreement. Accordingly, I find the Landlord

provided insufficient evidence to prove the test for damage or loss, as listed above, and their claim for pest control services is hereby dismissed, without leave to reapply.

The Landlords' claim has been dismissed, therefore, I order the Landlord to return the Tenant's security deposit of \$500.00 plus interest in the amount of \$0.00 to the Tenant at the address listed on the front page of this decision, forthwith.

Conclusion

The Landlords' claim is HEREBY DISMISSED, without leave to reapply.

The Tenant has been issued a Monetary Order in the amount of **\$500.00**. If the Landlords fail to return the security deposit forthwith, as Ordered above, the Tenant may serve the Landlords the enclosed Order. If the Landlords do not comply with the Monetary Order, it may be filed with the Province of British Columbia Small Claims Court and 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: March 28, 2014

Residential Tenancy Branch

