



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenants for the return of their security deposit and for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both the landlord and tenants attended the teleconference hearing and gave affirmed evidence. The landlord was assisted by an agent/translator, and the tenants were assisted by a translator. Both translators affirmed their translations.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit and pet deposit?
Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree the tenancy started August 24, 2013 and was a fixed term tenancy for one year. The tenants were obligated to pay monthly rent of \$1,500.00. The tenants also paid a security deposit of \$750.00 and a pet deposit of \$750.00.

The tenants gave evidence that they moved out September 28, 2013, after a little more than one month of tenancy, because there was a bedbug infestation in the rental unit. The tenants claim a refund of their security and pet deposits and of October 2013 rent. The tenants also claim compensation of \$7,681.00 to replace bedroom furniture and mattresses that they abandoned due to the bedbug infestation, \$500.00 for the cost of moving, and their \$100.00 RTB filing fee.

The tenants gave evidence that they became aware of bedbugs about two days after they moved in, when they started getting bites on their bodies. The tenants' evidence is that their son called the landlord several times starting about August 26 or 27, 2013. Their evidence is that the landlord did not return their calls, but a property manager came to the house about a week later and told them the landlord had asked him to come. The tenants' evidence is that they showed the property manager bedbugs they had caught in tupperware containers and showed him bites on their bodies. The tenants' evidence is that the property manager told them he would bring something to get rid of the bedbugs.

The tenants gave evidence that the landlord and another man came to the house about three or four days later and spread white powder around the rental unit. The tenants' evidence is that the man was not from a pest control company. However, the tenants say that a pest control company came in about 3 or 4 days afterward. The tenants were asked to leave the house while the pest control company was working. The tenants say the pest control company told them the house would need to be treated about six times. At that point, the tenants decided to move out. The tenants' evidence is that they gave notice to the landlord about a day or two later, and moved out September 28, 2013.

The tenants gave evidence that they left behind some furniture and mattresses because they were infested. Their evidence is that the mattresses were less than a year old, a sofa was less than one year old, and another sofa and entertainment system were about two years old. The tenants did not provide receipts or photographs for any of the furniture they left behind. The tenants did provide receipts for the new furniture they purchased in late September or early October 2013.

The tenants gave evidence that a friend with a truck moved their remaining possessions and they paid him \$500.00. The tenants' evidence is that they had given the landlord post-dated cheques and the landlord deposited their October 2013 rent cheque for \$1,500.00.

The landlord gave evidence that the tenants first notified them of a bedbug problem on September 19, 2013 when the female tenant called the landlord. The landlord and her agent went to the house either September 19 or 20, 2013; they provided bedbug traps and "crawling insect powder" they purchased at Home Depot.

The landlord's evidence is that they asked the tenants to show them where the bedbugs were, and the tenant showed them a mattress. The mattress had a few dots of blood on it, but they did not see any bugs. The landlord's evidence is that the mattress was very old and in poor condition. The landlord gave evidence that they brought in a pest

control company on September 24, 2013. The pest control company did not tell the landlords that any additional visits were necessary, however the landlord did schedule another treatment for two weeks later in October. The landlord gave evidence that the pest control company told the landlord that the tenants' mattress was likely the source of the infestation.

The landlord provided two letters from previous tenants, who stated they did not experience any problem with bedbugs. The landlord's evidence is that no tenant had reported bedbug problems prior to the tenants in this application. The landlord's evidence is that the property manager did visit the tenants on August 31st, however the tenants made no mention of bedbugs at that time.

The landlord gave evidence that she deposited the tenants' October 2013 rent cheque because she did not realize the tenants had moved out.

The parties had a previous hearing on January 15, 2014 and March 3, 2014 (File 813529). That decision was issued on March 4, 2014, and the landlord's application for a monetary order and to retain the tenants' security deposit was dismissed with leave to reapply. The decision indicates the landlord had the tenants' new address on January 15, 2014 (although perhaps not before that).

Analysis

I find the tenants moved out of the rental unit on September 28, 2013. Since the tenants did not occupy the rental unit during the month of October 2013 and since the landlord has not applied for and proven rental losses for October 2013, the tenants are entitled to the return of October 2013 rent of \$1,500.00.

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on September 28, 2013. However, the tenants did not provide their forwarding address to the landlord until approximately January 15, 2014 during the hearing of the landlord's application. At that point, the landlord had applied to retain the security deposit. The landlord's application was dismissed with

leave to reapply on March 4, 2014. At the time of this hearing, four weeks later, the landlord had not reapplied to retain the tenants' security deposit.

For the purpose of applying Section 38(1), I find the 15 day period started the day the landlord received the Arbitrator's decision in File 813529. Since the decision is dated March 4, 2014, I assume the decision was mailed to the landlord on March 5, 2014 and received by the landlord five days later on March 10, 2014. Accordingly, the landlord had until the close of business on March 25, 2014 to either return the tenants' security deposit or to apply for dispute resolution to make a claim against the security deposit.

The landlord did not apply for dispute resolution to make a claim against the security deposit within 15 days. Also, the tenant did not agree in writing to the retention of any part of the security deposit. The landlord is therefore obligated to return the entire security deposit to the tenant.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit. In this case, the landlord failed to repay the tenants the amount of \$750.00 from their security deposit and \$750.00 from their pet deposit. The tenants are therefore entitled to orders for twice those amounts; \$1,500.00 (double the security deposit) and \$1,500.00 (double the pet deposit).

I find the tenants have not proven, on a balance of probabilities, that the landlords are responsible for the costs of new bedroom furniture and mattresses for the tenants. The tenants did not provide any evidence from an expert, such as a pest control service, regarding where and how the bedbug infestation started. They also did not provide any evidence to prove that their belongings were infested. Finally, the tenants did not provide any evidence, such as receipts, to prove the value of the furniture and mattresses they disposed of.

I find the landlords are not responsible for the tenants' moving costs of \$500.00, since the tenants would have moved out at some point in any case and would have eventually incurred those costs.

The tenants have been partly successful in their application, however their monetary award is less than \$5,000.00 and so they are entitled to recover half their RTB filing fee, which is \$50.00 (the fee amount for claims below \$5,000.00).

The tenants are therefore entitled to the return of October 2013 rent (\$1,500.00), double their security deposit (\$1,500.00), double their pet deposit (\$1,500.00), and half their RTB filing fee (\$50.00), which totals \$4,550.00. I grant the tenants an order under

Section 67 for \$4,550.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenants a monetary award for \$4,550.00.

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: April 15, 2014

Residential Tenancy Branch

