



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- other remedies stemming from her alleged loss of services or facilities that the landlord committed to provide during the course of her tenancy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received copies of both the landlord's original dispute resolution hearing package sent by registered mail on May 7, 2014, and the landlord's amended package containing an amended application for dispute resolution sent by the landlord by registered mail on August 19, 2014. The tenant also confirmed that she had received copies of the landlord's written and photographic evidence package. The landlord's representative (the landlord) confirmed that on May 22, 2014, she received a copy of the tenant's dispute resolution hearing

package sent by the tenant by registered mail the previous day. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

At the hearing, the landlord testified that she had not received any written evidence from the tenant. The tenant confirmed that she had not sent the landlord any of the written or photographic evidence she had sent to the Residential Tenancy Branch (the RTB) as she mistakenly expected that the RTB would forward copies of her evidence to the landlord. I advised the tenant that she was clearly mistaken in her understanding of the process for serving evidence to the Respondent in her application. As the tenant has not supplied copies of her written and photographic evidence to the landlord, I advised the parties that I would not be taking into account any of the tenant's written or photographic evidence.

At the hearing, the tenant produced two witnesses who were willing to provide sworn testimony. I received their telephone numbers and asked them to disconnect until such time as we called them in the event that their sworn testimony was relevant to the issues before me. During the course of this hearing, I asked the tenant to describe the testimony that her witnesses would be providing. She said that one of her witnesses would be giving sworn testimony with respect to the condition of the blinds at the end of her tenancy and her efforts to clean these used blinds. After confirming that the blinds in question were at least seven years old and likely much older by the end of this tenancy, I advised the parties that it was unnecessary to hear from the tenant's witness with respect to my consideration of the landlord's claim regarding these blinds. The tenant said that her other witness planned to describe the process that she followed in 2010 when that tenant's rental unit in this same rental tower had to be treated for bedbugs. I advised the tenant that I could see little relevance that a bedbug treatment of another rental unit four years earlier would have on the tenant's claim for a monetary award for events that occurred in 2014. I advised the parties that I was unwilling to hear testimony from this second witness regarding what I considered to be evidence that was irrelevant to the matters properly before me.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, utilities and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the tenant entitled to a monetary award for losses or damages arising out of this tenancy? Which of the parties are entitled to the tenant's security deposit? Are either of the parties entitled to recover their filing fees for this application from one another?

Background and Evidence

While I have turned my mind to the documentary evidence properly served to the RTB and to one another, including photographs, miscellaneous letters, receipts, invoices and reports, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

This tenancy began as a one-year fixed term tenancy on June 1, 2007. The rental unit was in a large multi-unit rental building. When the first term of this tenancy expired, the tenancy continued as a periodic tenancy until the tenant vacated the rental unit on April 30, 2014. Monthly rent was initially set at \$750.00 per month plus \$15.00 for monthly parking. By the end of this tenancy, the monthly rent had increased to \$850.00 and the monthly parking was \$25.00. The tenant paid a \$375.00 security deposit, a \$10.00 key deposit, and a \$35.00 garage opener deposit on May 21, 2007. The landlord continues to hold all of these deposits.

The landlord entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement), and copies of the joint move-in condition inspection report of June 12, 2007, and the move-out condition report signed by only the landlord at the time of their joint move-out inspection on April 22, 2014. The landlord also entered into written evidence a copy of the tenant's March 31, 2014 written notice to end this tenancy on April 30, 2014.

The landlord's application for a monetary award of \$1,170.00 included the following items identified on the landlord's Monetary Order Worksheet:

Item	Amount
Unpaid Rent for April 2014	\$850.00
Unpaid Parking April 2014	25.00
NSF Fee for Returned Cheque April 2014	25.00
Late Fee April 2014	25.00
Tile Removal	100.00
Blind Cleaning	75.00
Unpaid Utilities	20.93
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	\$1,170.93

The tenant's application for a monetary award of \$4,700.00 included the following, which were based primarily on her decision to abandon some of her belongings and store other belongings for one year in accordance with recommendations provided to her by the pest control company retained by the landlord. Although I have outlined the

breakdown of the items identified in the tenant's written evidence, I do so only to identify the items requested in the tenant's monetary award. As noted above, I cannot consider this evidence because the tenant did not provide the landlord with a copy of this evidence.

Item	Amount
Replacement Cost of Sofa	\$700.00
Replacement Cost of China Cabinet	500.00
Replacement Cost of Miscellaneous Furnishings	700.00
Replacement of Clothing	300.00
Storage Rental (\$114.85 + \$227.50 + (10 x \$197.96) = \$2,311.95)	2,311.95
Incidental Costs	310.00
Total of Above Items	\$4,821.95

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case, there is undisputed evidence that the tenant did not pay any rent for April 2014, the last month of her tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord testified that she commenced her efforts to re-rent the premises shortly after the tenant gave her notice to end this tenancy. She said that she was successful in re-renting this suite about 1 ½ months after the tenant vacated the premises. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises as soon as possible. The tenant remained in possession of the rental unit for 22 days of April and notified the landlord that she intended to leave by the end of April 2014. Under these circumstances, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenant's exposure to losses. As the landlord has lost rent for April 2014, I allow the landlord to recover \$850.00 in unpaid rent owing from April 2014. As the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord clearly shows that the landlord is entitled to receive payments of \$25.00 for returned/NSF cheques and for late fees, I also allow these portions of the landlord's application.

As parking is a separate charge outside the *Act*, I dismiss the landlord's application for the recovery of unpaid parking fees without leave to reapply.

I heard conflicting evidence with respect to the landlord's claim for \$20.93 in unpaid utilities remaining at the end of this tenancy. The landlord testified that at the end of this tenancy and the time of the landlord's application for dispute resolution on May 2, 2014, utilities remained owing from this tenancy. The tenant testified that she received her final utility bill for \$15.56 and paid \$20.00 for it, leaving her with an acquired credit of \$4.44. At the hearing, the landlord testified that she understood that the landlord had looked after the hydro bill and that the landlord had no information regarding the tenant's payment of any utility bill that remained owing at the end of her tenancy. As I am not satisfied that the landlord has demonstrated that the landlord actually incurred costs of paying the utility bill at the end of this tenancy, I dismiss this aspect of the landlord's claim without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord provided undisputed sworn testimony, photographic and written evidence that the tenant installed tile on the balcony during the course of this tenancy which was unauthorized and had to be removed at the end of the tenancy at the landlord's expense. I issue a monetary Order in the landlord's favour in the amount of \$100.00 to remove these tiles.

I heard disputed evidence from the parties with respect to the landlord's claim that the blinds in this rental unit were not cleaned to the landlord's satisfaction at the end of this tenancy. The tenant testified that she cleaned the blinds with a cleaning product and placed them on the carpet. She said that there were water stains on the blinds, stains that were there when this tenancy began. She also said that any deterioration in the condition of the blinds during this tenancy was a function of reasonable wear and tear that developed during her almost seven year tenancy. The tenant also questioned the

credibility of the cleaning bill submitted into written evidence, noting that the bill was on the landlord's own stationery for cleaning performed by the landlord's staff.

In considering this aspect of the landlord's claim, I note that the blinds were listed as clean at the time of the joint move-in inspection of the rental unit, which was signed by the tenant on June 12, 2007. By the end of this lengthy tenancy, the blinds may not have been in the same condition as when the tenancy began as a result of reasonable wear and tear. I allow only \$25.00 of the landlord's claim for a monetary award for blind cleaning, as one cannot expect that ageing blinds could be cleaned to the same extent as new ones.

I allow the landlord to retain all of the deposits currently held by the landlord from this tenancy (i.e., security, key and remote deposits) plus applicable interest in partial satisfaction of the monetary Order issued in the landlord's favour. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for the landlord's application.

Turning to the tenant's application, the tenant said that she first started noticing problems she later attributed to bedbugs in October 2013. She did not notify the landlord of these problems until February 2014. Once the landlord was notified of this infestation, the landlord undertook a detailed and ongoing effort through a pest control company to check and treat the problem with repeated spraying and visits by staff accompanied by specially trained canines.

The tenant could only be eligible for some form of compensation if she could demonstrate that the landlord had somehow been negligent or omitted to attend to the concerns she raised about the bedbug infestation. Based on the sworn testimony of the parties and the written evidence of the landlord, I find that the landlord has been if anything particularly diligent in attempting to treat this problem. The pest control company returned to the premises many times after the initial problem was reported. On a number of these occasions, there was no evidence of any bedbug activity in the rental unit.

While I am sympathetic to the disruption that the arrival of bedbugs in the tenant's rental suite caused the tenant, the presence of pests of this nature are unfortunately an increasing reality of modern life and living in rental properties. Assigning responsibility for problems of this nature to either tenants or landlords is extremely difficult given the resilience of these pests to all kinds of treatments. The most vigilant and prudent landlords and tenants can still end up with pest problems of this type even after taking every possible precaution. Both parties bear considerable costs both financial and

otherwise when bedbugs arrive in a building. Unless negligence can be proven, parties often have to bear their own costs associated with coping with the disruption and losses that result from trying to eradicate a bedbug infestation.

In this case, I find insufficient evidence of any negligence or omission on the landlord's part that would make the landlord in any way responsible for the costs the tenant has claimed for in discarding, replacing and storing her belongings. While the actions the tenant has taken are in accordance with best practices often recommended by pest control experts when asked about measures to ensure an eradication of the pest problem, this in no way makes the landlord responsible for the tenant's decision to follow that best practice advice. I dismiss the tenant's application in its entirety without leave to reapply. In coming to this determination, I also note that the tenant has not submitted written evidence that I could take into account in support of her application due to her failure to provide a copy of her evidence to the landlord.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, losses, damage and the filing fee for this application and to retain all deposits paid by the tenant:

Item	Amount
Unpaid Rent for April 2014	\$850.00
NSF Fee for Returned Cheque April 2014	25.00
Late Fee April 2014	25.00
Tile Removal	100.00
Blind Cleaning	25.00
Less Security, Key and Remote Deposits plus Interest (\$375.00 + \$10.00 + \$35.00 + \$10.24 = \$430.24)	-430.24
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$644.76

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application without leave to reapply.

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: September 12, 2014

Residential Tenancy Branch

