



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application dated August 5, 2014 by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to recover the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the Hearing the Parties evidence packages were noted including an evidence package from the Landlord provided to the Residential Tenancy Branch (the “RTB”) on February 13, 2015. The Tenants state that this package was not received until a couple of days before the hearing. The Landlord states that the package was sent to the Tenants by registered mail on February 16, 2015. The Landlord states that the evidence could not have been provided earlier as the Landlord was away. It is noted that the Tenant’s application was made in August 2014. It is also noted that the Landlord’s evidence consists of letters from other tenants dated February 11 and 13, 2015, documents in relation to deductions made for the return of the security deposit dated September 2014, a memo from the Landlord to a pest company dated September 2014 and an invoice from the company dated February 6, 2014.

Rule 3.15 of the RTB Rules of Procedure (the “Rules”) provides that a respondent must submit evidence as soon as possible and not less than 7 days before the hearing. Given that more than 5 months has been available to the Landlord to provide their evidence most of which was available since at least September 2014 and considering that the Landlord gave no evidence that tenant letters or the company invoice could not have been obtained sooner, I find that the Landlord has not provided sufficient reason for its failure to provide the evidence within the time required. Considering the prejudice to the Tenant in not having reasonable time to respond to the late evidence, I find that I may not consider the Landlord’s late evidence package.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started in March 2014 and ended on June 30, 2014. Rent of \$1,600.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. The Tenants provided a forwarding address to the Landlord on July 16, 2014 and the Landlord subsequently returned \$290.00 to the Tenants.

The Tenant claims return of the security deposit.

The Landlord states that the monies were deducted from the security deposit for the payment of utilities owed by the Tenants. The Landlord states that the Tenants did not sign an agreement for the deduction and that the Landlord did not make an application for dispute resolution to claim against the security deposit.

The Tenant states that rodents were discovered in the unit in late January 2014. The Tenant states that the Landlord was immediately informed and a pest control company attended the unit on February 6, 2014. The Tenant states that the company laid approximately 5 traps and poison in drawers and under the oven. The Tenant states

that on this date the company told the Landlord of holes that needed to be covered. The Tenant states that on March 6, 2014 the company again attended the unit, repeated the traps and poison, and mentioned the need to cover the holes in the unit. The Tenant states that the traps were useless as the rodents just moved them about on the floor following this visit. The Tenant states they then purchased their own traps and caught 13 mice. The Tenant states that the company traps did not work and that the rodents were also multiplying. The Tenant states that when the Landlord was again asked about covering the holes the Landlord told the Tenants to keep their house clean. The Tenant states that the company also told the Tenants that there was an outdoor rat infestation as well. The Tenant states that the Landlord responded to this by saying nothing could be done. The Tenant states that the Landlord did not cover any holes until the first week in April 2014 when a few holes inside the unit was covered. The Tenant states that the Landlord did not cover any of the external holes. The Tenant states that the Landlord was on holidays until he came to close the holes in April 2014. The Tenant states that the Landlord was again shown the rodent droppings on this occasion. The Tenant states that the rodents were present until they moved out and that they would have moved out of the unit earlier but that rental options were restricted by the size of their family and proximity to the children's schools.

The Tenant claims damages to their belongings, loss of household goods, loss of use of a bedroom for their two children, loss of enjoyment of the unit and costs to repeatedly clean rodent feces. The Tenant provides photos of damaged items, holes and rodent feces. The Tenant states that the damaged personal items were not replaced and that the amounts claimed were estimates of their value. The Tenant claims a total of \$14,345.00 and provides a detailed monetary breakdown for the damages claimed in relation to the rodents. The Tenant states that no employment wages were lost when the Tenant took a sick day due to lack of sleep from the rodents overnight activity.

The Landlord states that none of the other tenants in the building reported any rodents. The Landlord states that the pest company told him to wait for a month before checking for holes as the company had left bait outside the unit and the holes would allow the

mice to leave the unit. The Landlord states that the holes around the drain pipes and closets inside the unit were covered in early March 2014. The Landlord states that no exterior holes were found. The Landlord states that he asked the pest company for a report of their work but was told that the company does not provide such reports. The Landlord states that at the second visit to the unit the company informed the Landlord that the bait was working. The Landlord states that there were no rodents in the unit until after the Tenants moved in and that the Tenants do not keep their place clean. The Landlord states that the company assured the Landlord that they would take care of the problem and the Landlord relied on that reassurance.

The Landlord states that the Tenants have not provided any supporting evidence for their monetary claim. The Landlord states that the Tenants should have moved out of the unit if it was that bad. The Landlord states that they should not have to pay for the Tenants cleaning and that they did not know about the loss of use of the bedroom until "after the fact".

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. This section further provides that a landlord may only make a deduction from the security deposit where, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to repay the full amount to the Tenant I find that the Landlord must now repay the Tenant double the security deposit plus zero interest in the amount of \$1,600.00. Deducting the \$290.88 already returned leaves **\$1,309.12** owed by the Landlord.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and

housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

It is undisputed that rodents were in the unit. The Landlord provided only an unsupported assertion that the Tenant's lack of cleaning caused the problem and I do not accept this. Based on the photos it is clear that there were large holes inside the unit and I accept the Tenant's more persuasive evidence that the Landlord failed to cover those holes until April 2014, more than two months after the rodents were reported. I found the Tenants evidence of the continued existence of the rodents despite the pest company's efforts to be credible and believable given the undisputed evidence of holes in the unit. Without evidence from the pest company to support the Landlord's decision not to cover the holes in order for the rodents to leave I find this evidence to lack persuasion. I accept that the presence of the rodents would have caused the Tenants a loss of enjoyment of the unit. Given the length of time taken by the Landlord to cover holes I find that that the Tenants have substantiated on a balance of probabilities that the Landlord acted negligently in response to its obligation to maintain the unit and caused the Tenants losses. As such I find that the Tenants are entitled to compensation.

Given the lack of supporting evidence of the value of the damaged goods, or of the loss of employment income and considering that none of the damages goods have been replaced I find that the Tenants have not substantiated the amounts claimed for the damage to their personal belongings. I accept however that food would reasonably be lost and require replacement and that the Tenants would have reasonably purchased

storage containers to reduce this loss. I find therefore that the Tenants have substantiated a nominal loss of **\$150.00**. While I do not consider the Tenant's evidence of loss of a bedroom to be sufficiently supported, I do accept that the Tenants would have reasonably lost sleep, comfort and peace and would have been unreasonably disturbed by the presence of the rodents. I also accept that the Tenants would have expended more cleaning time than usual. However considering that the Tenant's otherwise had full use of the unit I find that the amount claimed by the Tenants to be excessive. As such I find that the Tenants have only substantiated a nominal sum of \$400.00 for their losses for each month from February 1 to June 30, 2014 in the total amount of **\$2,000.00**

As the Tenant's application has been found to have merit I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,409.12**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,409.12**. If necessary, this order may be filed in the 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 6, 2015

Residential Tenancy Branch

