



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mount Benson Senior Citizens Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant made the application on September 22, 2014. The landlord confirmed receipt of the hearing documents in October 2014.

The landlord made an evidence submission to the Residential Tenancy Branch (RTB) on April 13, 2015. The tenant received this evidence and was able to review it. The tenant then made an evidence submission to the RTB on April 17, 2015. The tenant did not provide the landlord with a copy of the evidence. Therefore, as the landlord was not given the tenant's evidence it was set aside. The tenant was at liberty to make oral submissions.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$500.00 for the cost of a bed and hide-a-bed?

Background and Evidence

The tenancy commenced on May 1, 2005. Rent is currently \$488.50, due on the first day of each month.

There was no dispute that on July 21, 2014 the building manager and assistant building manager were in the tenant's unit. Bed bugs had been discovered in the unit. The unit was heat treated on several occasions shortly after the report of pests was made by the tenant.

The parties disputed the details of what occurred on July 21, 2014. The tenant said that the landlord's staff observed bed bugs on the furniture, told her that treatment would be arranged and then left the unit. The tenant then went out for a walk. When the tenant returned to the unit approximately 10 minutes later the landlord's employees were in her unit. The tenant had not given the employees permission to re-enter the unit. The tenant's bed had been removed and the employees were in the process of dismantling the hide-a-bed.

The tenant said she did not tell the employees to leave her unit as she was shocked and stunned that they were removing the furniture. The tenant said that after entering the rental unit she saw that her bed and couch cushions had already been removed she felt it was too late to do anything. The tenant agreed that she gave the employees a hammer and screwdriver, to assist them in dismantling the furniture.

The tenant said that another occupant of the building, L.M., told her that she had talked to the employees on July 21, 2014, who had asked her if she thought the employees could enter the unit while the tenant was not there. An attempt was made to call occupant L.M. into the conference call hearing as a witness; she could not be reached. The tenant had not asked L.M. to be prepared to act as a witness.

The tenant confirmed that she then wrote the landlord letters dated August 25 and 27, 2014 that were referenced in the landlord's evidence. The tenant had made a request for compensation for the furniture.

The landlord responded that the employees had entered the unit where they found evidence of bed bugs on a box spring of the bed, mattress and hide-a bed. The tenant was told an exterminator would be called as soon as possible. The tenant told the employees that she did not wish to have the furniture remain in the unit so the employee, K.M. offered to remove the furniture for the tenant. The tenant agreed and provided tools to assist in the removal.

Employee D.K. supplied a written statement that he accompanied K.M. to the unit and that K.M. did offer to remove the infested furniture for the tenant and that she agreed to removal. The disassembly of the hide-a-bed caused a significant amount of noise, so the tenant decided to leave the unit for a short period of time, to take a walk.

On September 5, 2014 the landlord sent the tenant a letter; a copy of which was supplied as evidence. The executive administrator at the time wrote that they had received the tenant's request for compensation. The landlord pointed out that since the initial report of bed bugs they had heat treated the unit on two occasions. The landlord acknowledged the allegation that the tenant's furniture had been removed when she was out of the unit. The landlord said that removing furniture was hard work, expensive for the landlord to dispose of and would not be something the landlord would do for a tenant unless she had specifically requested assistance. The landlord submitted that to September 2014 they had been disposing of items tenants no longer wanted to keep, as a courtesy to tenants.

The tenant responded that the landlord and the landlord's employees were not being honest, that they had entered her unit without her permission and removed the furniture without her agreement. The tenant has had some health problems and did not feel equipped to stop the removal of her furniture when she returned from her walk on July 21, 2014.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenant has the burden of proving his claim, to a degree that is believable. I must be satisfied, on the balance of probabilities that the landlord removed the tenant's furniture by entering her unit without permission.

My assessment and finding is based on the evidence supplied by each party; through oral testimony and written submissions. Where one party provides a version of events in one way and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has failed to meet the onus of proving their version of events.

The tenant provided nothing to substantiate her claim that the landlord entered her unit without her permission. The tenant did not bring a witness to the hearing to refute the landlord's submission even though the tenant said she had such a witness. An unsuccessful attempt was made during the hearing to reach that witness. Further, the tenant was present when the landlord was disassembling the furniture and did not protest or tell the landlord to leave the furniture in the unit.

Therefore, in the absence of any evidence that the furniture was removed without the tenant's permission and acknowledgment I find that the claim for replacement is dismissed.

Conclusion

The claim is dismissed.

This decision is final and binding and 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 29, 2015

Residential Tenancy Branch

