



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPB, MNR, MNSD, MNDC, FF

For the tenant – MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; other issues and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, although the tenant did not collect the landlord's evidence that was sent by registered mail. This evidence is deemed to have been served five days after it was sent pursuant to s. 90(a) of the *Act*. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2014 for a fixed term of one year. Rent for this unit was \$1,450.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$425.00 on September 15, 2014.

The landlord's application

The landlord testified that he lives out of Provence and received a call from his father who acts as the landlord's agent in tenancy matters. His father informed the landlord that the tenant had said he had bedbugs in his unit. The landlord called a pest control company who inspected the unit and found no evidence of bedbugs. The tenant complained about bites on his body but the tenant has provided no medical evidence to show these were caused by bedbugs.

The landlord testified that he came back to BC and had another pest control company inspect the unit. Again nothing was found in the unit. At that time it was noted that the unit had been abandoned and the tenant had left a sofa and a mattress. The unit was left in an unclean condition. The landlord testified that the tenant did not provide written notice to end the tenancy and had not paid rent for October despite living in the unit for two weeks. The landlord seeks a Monetary Order to recover unpaid rent for October of \$1,450.00.

The landlord testified that he had to travel to BC to deal with the tenants issues about bedbugs and seeks to recover his costs for gas of \$425.00. The landlord testified that he had to stay in a hotel while he was in BC and seeks to recover the cost for the hotel of \$197.60. The landlord testified that as he had to have the second pest inspection done he seeks to recover that cost of \$45.00. The landlord has provided the invoice for the hotel, gas receipts and the invoice from

the pest control company in documentary evidence. The landlord testified that he had sought to recover lost wages but withdrew this section of his claim.

The landlord seeks an Order to keep the security deposit of \$725.00 to apply to the unpaid rent.

The tenant disputed the landlord's claims. The tenant agreed he moved into the unit on October 01, 2014 but had to vacate due to bedbugs on October 05, 2014. The tenant defied that the landlords claim for unpaid rent should be dismissed as the landlord did not provide a rental unit in a condition fit to live in. The tenant testified that the landlord's agent had arranged to have the unit fumigated but cancelled that treatment even after the tenant's pest control technician recommended the unit was sprayed as bedbugs may not be visible but can live inside the walls and come out at night. The tenant testified that the pest control company technician that he had out to inspect the unit saw the bites on the tenant's body and has documented on the invoice that these were telltale signs of bedbug bites.

The tenant's application

The tenant testified that when he found the landlord's agent had cancelled the fumigation treatment the tenant moved out straight away and since that time no further bites have been found on his body. The tenant referred to his documentary evidence from the bedbug registry which shows that another unit, 607, had bedbugs. This unit is just one unit over from the tenants and bedbugs migrate between units. The tenant seeks to recover the cost for his bedbug inspection of \$78.75.

The tenant testified that he had to move into a hotel for two nights after leaving the unit until alternative accommodation could be found. The tenant seeks to recover the hotel costs of \$207.38.

The landlord disputed the tenant's claim. The landlord testified that the tenant has no proof to show the bites on his body were caused by bedbugs from this unit. The technician's statement is not based on medical evidence. The landlord testified that the previous tenants never had any issues with bedbugs and the new tenants have not complained about bedbugs. The landlord testified that the tenants made some contradictory statements to the landlord's agent when the tenant at first said the bedbug marks were on his daughter and now he is saying they are on

him. The tenant also told the property manager that he had complained about bedbugs in his previous unit, and now he is concerned about them being in this unit, yet the tenant bought his bed and sofa from the previous unit and has now left them at the landlords unit when they could have had bedbugs in them.

The tenant disputes that he told the landlord's agent that the bites were on his daughter. The tenant also disputed that he said he had had bed bugs at his previous unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent; the landlord has established that the parties had entered into a fixed term tenancy agreement for a year yet the tenant vacated the unit after five days and failed to pay rent for October. The matter arises out of whether or not the tenant was permitted to end the tenancy because of bedbugs in his unit which the landlord failed to treat.

Having considered the evidence before me I find the landlord was notified of bedbugs by the tenant and the landlord took immediate action to send in a pest control company. That company found no evidence of bedbugs. It is common practice not to treat a unit unless there is evidence of bedbugs in the unit. The tenant still complained and the landlord personally came and paid for another pest control company to come and inspect the unit. The results remained the same and no evidence of bedbugs was found in the unit during the second inspection. The tenant also had an inspection carried out by another pest control company and their report documents that no evidence of bedbugs was found in the unit and although the technician has documented that the manager has agreed to spray the unit and hopefully seal the floor edges this alone would not be justification for the tenant to end the tenancy if the landlord did not have the unit sprayed or seal the floor edges when no evidence has been found for bed bugs.

The tenant has insufficient evidence to show that the bites on his body were caused by bedbugs and the pest control technician is not a qualified medical practitioner. Furthermore, there is no evidence to show that even if these were bedbug bites that the tenant got the bites while in his unit and not somewhere else.

Consequently, I am not satisfied that the tenant had just cause to end the tenancy and therefore I find in favor of the landlord's claim to recover unpaid rent for October, 2014 of **\$1,450.00**.

With regard to the landlord's claim for travel costs, hotel costs and the costs to inspect the unit; there is no provision under the *Act* for a monetary award to be made for an absent landlords travel costs or hotel costs if the landlord lives elsewhere. These sections of the landlord's claim are therefore dismissed. I further find the landlord must do his due diligence when bedbugs are reported to confirm whether or not bedbugs are present in a tenant's unit particularly in light of the fact that another unit close by is documented on the bedbug registry as having had bedbugs. I therefore dismiss the landlord's application to recover the cost for bedbug treatments.

I Order the landlord to keep the security deposit of \$725.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary claim for unpaid rent.

As the landlords' claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

With regard to the tenant's claim for compensation for damage or loss; the tenant seeks to recover the cost of a hotel for two nights stay after leaving the rental unit. As previously mentioned I am not satisfied that the tenant has met the burden of proof that his unit did have bedbugs and that the tenant had to end the tenancy because of this. Consequently, the tenant must pay his own hotel costs and this section of the tenant's claim is dismissed.

With regard to the tenant's claim to recover the cost for the bedbug inspection he arranged. The landlord had already had two bed bug inspections carried out at the unit and both had come back stating there was no evidence of bedbugs. If the tenant then felt he had to have a third opinion from another pest control company then the tenant is responsible for any costs he incurred. This section of the tenant's claim is dismissed.

As I have awarded the security deposit to the landlord I am not prepared to amend the tenant's application to recover the security deposit. Furthermore as the tenant's claim has no merit the tenant must cover the cost of his filing fee.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$775.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

The tenant's application is dismissed 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: May 27, 2015

Residential Tenancy Branch

