



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

The Agent for the Tenant stated that on December 15, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on December 10, 2014 were sent to the Landlords, via registered mail. The Landlords acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 22, 2015 the Landlords submitted 21 pages of evidence and a USB stick to the Residential Tenancy Branch. The male Landlord stated that this evidence was served to the Tenant by registered mail on January 27, 2015. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On June 09, 2015 the Tenant submitted six pages of a Digital Evidence Detail form and a USB device to the Residential Tenancy Branch. The Agent for the Tenant stated that these documents were served to the Landlords by registered mail on June 09, 2015. The Landlords acknowledged receipt of these documents and they were accepted as evidence for these proceedings. The male Landlord initially stated that the USB device was not received but he subsequently acknowledged receipt of the device. As the Landlords acknowledged receipt of the USB device, it was accepted as evidence for these proceedings.

On June 13, 2015 the Landlords submitted a USB device to the Residential Tenancy Branch. The male Landlord stated that this was simply a duplicate of the USB device the Tenant served to him as evidence for these proceedings. As this device has already been accepted as evidence, there is no need for to consider whether the duplicate device should also be accepted as evidence.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Neither party was permitted to present evidence regarding the condition of the rental unit at the end of the tenancy, as that is not an issue in dispute at these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit and compensation for money she paid for treating bed bugs?

Background and Evidence

The Tenant and the Landlords agree that:

- this tenancy began on June 15, 2007;
- on June 20, 2007 the Tenant signed a “check list” in which she authorized the Landlords to “have any and all charges against me for damages and or cleaning or repairs, to be taken out of my security deposit at the end of my tenancy”;
- a security deposit of \$395.00 was paid on June 12, 2007;
- this tenancy ended on October 31, 2014;
- the Tenant provided the Landlords with a forwarding address, in writing, on October 28, 2014;
- the Landlords did not return any portion of the security deposit;
- the Landlords did not file an Application for Dispute Resolution claiming against the security deposit; and
- at the end of the tenancy the Tenant did not give the Landlords written authorization to retain any portion of her security deposit.

The Tenant is seeking to recover \$523.95 that she paid to treat a bedbug infestation in her rental unit. In regards to this claim the Tenant and the Landlords agree that:

- the Tenant reported bed bugs in her rental unit in the summer of 2014;
- the Landlords arranged to have the rental unit treated on two occasions in September of 2014;
- the Landlords told the Tenant she was responsible for paying for the treatment; and
- the Tenant paid \$523.95 for the treatment.

The male Landlord stated that he told the Tenant she was obligated to pay for treating the bedbug infestation because he believes she brought the bedbugs into the rental unit. The Landlords submitted no proof to support this submission.

The Tenant stated that she does not know where the bedbugs originated although she suspects they travelled into her apartment from a neighbouring rental unit. The Tenant submitted no proof to support this submission.

The Tenant stated that she was told the occupant of unit #105, which is across the hall from her unit, also had bedbugs in the summer of 2014. The male Landlord stated that a bedbug carcass had been located in unit #105 in December of 2013 and that it had been treated for bedbugs shortly thereafter. He stated that bedbugs were not reported in that unit after this treatment.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates 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 either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(1) of the *Act*, I find that the Landlords must pay the Tenant double the security deposit.

Section 38(4) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, 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. I specifically note that the *Act* requires a tenant to provide this consent at the end of the tenancy.

As there is no evidence that at the end of the tenancy the Tenant gave the Landlord authorization to retain any portion of her security deposit, I find that the Landlord did not have authority to retain the security deposit pursuant to section 38(4) of the *Act*. Although the Tenant did give the Landlord written authority to retain all or part of her security deposit on June 20, 2007, this was given well before the end of the tenancy and does not meet the requirements of section 38(4) of the *Act*.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that having regard to the age, character, and location

of the rental unit, makes it suitable for occupation by a tenant. This includes, in my view, treating a residential complex for bedbugs unless it can be established that a particular tenant is directly responsible for the infestation.

I find there is insufficient evidence to show that the Tenant was responsible for the bedbug infestation in her rental unit. I am aware that bedbugs are a common problem in British Columbia; that they are easily introduced into residential complexes; and that they frequently travel from one suite to another in a residential complex.

Given that bedbugs were found in a suite across the hall from this rental unit prior to the infestation in this rental unit, I find it entirely possible that the bedbugs in the rental unit originated in another area of the residential complex. Even if the infestation in unit 105 occurred in December of 2013, as the Landlord contends, I find it entirely possible that the bugs migrated to the Tenant's unit and that their presence was simply not detected for several months.

As there is insufficient evidence to establish that the Tenant was responsible for introducing the bedbugs to her rental unit, I find that the responsibility for treating the infestation falls to the Landlord. I therefore find that the Tenant is entitled to recover the \$523.95 she paid to treat the bedbugs.

I find that the Tenant's Application for Dispute Resolution has merit and that she is entitled to recover the fee paid to file this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$1,373.23, which is comprised of double the security deposit (\$790.00), \$9.28 in interest on the original amount of the security deposit, \$523.95 for the cost of treating bedbugs, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia 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: July 16, 2015

Residential Tenancy Branch

