



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes MNSD, MND, MNR, O, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double her security deposit and a cross-application by the landlord for a monetary order and an order permitting her to return the security deposit. Both parties participated in the conference call hearing with the landlord represented by her agent, MM.

At the hearing, the tenant indicated that she had in her possession a cancelled cheque which would prove that she had paid part of the utilities claimed by the landlord. I determined that it was appropriate to delay issuing my decision to give the tenant opportunity to submit this evidence and I instructed her to serve a copy of the front and back of this cheque on both the landlord and the Residential Tenancy Branch no later than October 14 and I instructed the landlord's agent to submit to both the tenant and to the Residential Tenancy Branch a statement or any evidence to respond to the tenant's evidence no later than October 21. Both parties agreed that they could comply with this timeline. I received a copy of the cheque from the tenant and a statement from the landlord that she too had received a copy of the cheque and acknowledged that it had been deposited to the landlord's account. Both parties made additional statements in their late submissions which I have not considered in my deliberations as the *only* evidence I told the parties I would accept after the hearing was a copy of the cheque and the landlord's acknowledgment or denial that the cheque had been deposited into the landlord's account.

Issues to be Decided

Is the tenant entitled to the return of double her security deposit?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2014 and ended on or about March 6, 2015. They further agreed that rent was set at \$750.00 per month and that the tenant paid a \$325.00 security deposit at the outset of the tenancy. They further agreed that the tenant had exclusive possession of a bedroom at the rental unit and that she shared common areas such as a kitchen, living area and bathroom with up to 6 other occupants.

The tenant testified that she provided her forwarding address to the landlord through registered mail sent to the landlord's address for service which was listed on the tenancy agreement. The tenant provided a copy of the receipt from Canada Post showing that the registered letter was mailed on March 28 and a copy of a printout from the Canada Post registered mail tracking system showing that a notice card was left by Canada Post for the landlord on April 1 and April 13 and that the letter was unclaimed and returned to the tenant on April 28. The landlord's agent testified that the landlord did not receive notification from

Canada Post that registered mail was waiting for her. The tenant seeks an award of double her security deposit.

The tenant also seeks to recover \$750.00 in rent for the period from April 1-30. The parties agreed that the landlord negotiated a post-dated cheque for that date although the tenant vacated the rental unit in early March. They further agreed that the tenant gave written notice on March 3, 2015 that she would be vacating the rental unit on March 6, 2015. (I note that the notice has a typographical error, stating the end of tenancy date as February 6, 2015.)

The landlord seeks to recover from the tenant \$210.00 as the cost of hiring an exterminator to treat the building for bedbugs and \$40.00 as the cost of an initial fogging treatment for bedbugs. The landlord also seeks to recover the \$348.52 cost of replacing a mattress and the \$25.00 charge to dispose of the old mattress. The landlord's agent testified that on February 11, the tenant sent her an email advising that she had noticed bumps on her body since she moved into the unit in October and upon the advice of a friend, inspected her mattress where she discovered the activity of bedbugs. In response to this email, the agent arranged for treatment on February 16 and when on February 21 the agent was again advised by the tenant that she was still being bitten, the agent arranged to have the mattress, which had been provided to the tenant by the landlord as part of the tenancy agreement, removed from the unit. The agent testified that between February 26 and March 4 she attempted to contact the tenant to have her prepare her room for further treatment and on March 13, the exterminator attended at the residence and discovered that the tenant had vacated the unit.

The landlord entered into evidence a copy of the exterminator's invoice showing that they paid \$210.00 for treatment of the building. The invoice states that live bedbugs were found only in the rental unit. The landlord also provided a statement from the exterminator in which he stated that none of the rest of the house had bedbug issues and that he estimated the age of the infestation "to be about 3 months old, meaning the problem would have been introduced sometime in early to mid-January." The landlord also provided a copy of a store receipt for the bedbug fogger showing that they paid \$29.91 plus tax for that item.

The tenant took the position that either the bedbugs were in the unit when she moved in or they migrated from another room. She testified that because there were a number of other occupants and their guests coming and going throughout her tenancy, any of those people could have introduced the bedbugs.

The landlord seeks to recover \$433.88 in unpaid utilities. The parties agreed that the tenant was obligated under the terms of the tenancy agreement to pay for utilities and that her portion of that payment was dependent on how many other occupants were in the residence as the bill was divided equally between all of the occupants. The landlord provided utility invoices showing that for 2 weeks at the beginning of the tenancy, she was solely responsible for the entire utility cost as there were no other occupants in the residence and that as other occupants moved in, her share was proportionally decreased. The landlord testified that the tenant paid part of the utilities owing early in the tenancy, but that she had stopped payment altogether.

The tenant testified that she paid \$98.25 for utilities for the first 3 months of her tenancy and although the total of her portion of the utility bills was more than that amount, she claimed that the landlord had told her that because the tenant was showing rooms to other prospective occupants, the tenant did not have to pay the entire amount owing. The tenant provided a witness, DB, who testified that the tenant had told her that the landlord had offered to pay part of the utilities in compensation for the tenant having shown

rooms to prospective occupants. After the hearing and at my request, the tenant was able to prove that she had paid \$110.04 toward utilities and that the money had been deposited into the landlord's account on May 4, 2015.

The landlord seeks to recover the \$115.00 cost of cleaning the carpet and the room at the end of the tenancy. The agent testified that the carpet needed to be shampooed as a result of the bedbug treatment and that the tenant did not clean the room when she moved out. The tenant did not comment on whether the room was clean, but stated that she should not have to pay for carpet cleaning because the bedbug infestation was not her fault.

Both parties seek to recover the \$50.00 filing fees paid to bring their respective applications.

Analysis

First addressing the tenant's claim, Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

The landlord's agent testified that the landlord did not receive notification from Canada Post that registered mail was available for her, but the tenant's evidence shows that Canada Post left 2 separate notification cards for the landlord. I find it unlikely that Canada Post, a disinterested third party, would deliver a notification card to the wrong address twice or that it would state that a notification card was left when in fact it was not. I find on the balance of probabilities that the notification cards were left for the landlord and were either overlooked or ignored.

I find that the tenant paid a \$325.00 security deposit and vacated the rental unit on March 6, 2015 and I find that the landlord received the tenant's forwarding address on April 2, five days after it was mailed. I find that the landlord failed to comply with section 38(1) and is now liable to pay the tenant double the security deposit. I therefore award the tenant \$650.00.

I dismiss the tenant's claim for the return of April's rent. The tenant was in a fixed term tenancy which was set to expire on August 30, 2015. Although the tenant purported to end her tenancy prior to that date, section 45(2) of the Act prohibits a tenant from ending a fixed term tenancy prior to the end of the fixed term. Section 53 provides that when a notice to end a tenancy sets a date for the end of the tenancy which does not comply with the Act, the incorrect date is automatically changed to the first date which complies with the Act. I therefore find that section 53 operated to change the effective date of the tenant's notice to August 30, 2015 and I find that the landlord was entitled to cash the tenant's rent cheque for the month of April. I note that although the tenant believed she had grounds to end the tenancy early, for the reasons outlined below, I find that she did not and further, she did not follow the procedure for ending the tenancy early as set out in section 45(3) of the Act.

Turning to the landlord's claim, I find that the preponderance of the evidence shows that it is more likely than not that the tenant introduced bedbugs to the rental unit. I have arrived at this conclusion because although the tenant claimed she noticed bites on her body from the time she moved into the unit in October, she did not question these bites or make any mention of them until February, which I find unlikely as she believed them to be spider bites and it seems probable that she would have objected to

the presence of spiders had the bites been present for so many months. Further, the report of the pest control technician, who I accept as an expert in the field, estimated that the infestation had begun in January, which is several months after the tenancy began. The tenant argued that the bugs could have migrated from other rooms, but the technician inspected the 3 level, 8 bedroom home and was unable to find any sign of bedbugs in the other rooms. I find it unlikely that bedbugs would have been in other rooms and left no trace, particularly as many of the other rooms were occupied and those occupants would have provided a food source for bedbugs.

Because I have found that the tenant introduced the bedbugs to the unit, I find that the tenant should be held responsible for the financial loss suffered by the landlord as a result of having to treat the building. I find that the tenant is responsible for the \$210.00 cost of treatment, the \$33.50 for the bug fogger (\$29.91 plus \$3.59 tax), \$348.52 for the cost of replacing the mattress and \$25.00 to dispose of the old mattress for a total of \$617.02 for bedbug costs. I award the landlord \$617.02.

The landlord provided evidence showing that over the course of the tenancy, the tenant owed a total of \$342.26 for natural gas and \$91.62 for hydro. In an email dated March 26, 2015, the landlord summarized the amounts owing, which amounts are different from those submitted by the landlord in support of her claim. I have taken the amounts laid out in the summary to support the claim as the actual amounts owing. In the March 26 email the landlord acknowledged having received from the tenant \$98.25 and at the hearing the agent also acknowledged having received that amount. The tenant's proof that she paid an additional \$110.04 brings the total paid to \$208.29, leaving a balance of \$225.59.

Although the tenant claimed that the landlord had offered to pay half of the utilities in compensation for the tenant showing rooms to prospective tenants, the landlord and her agent denied having made such a promise. The fact that the tenant told her witness DB that this promise had been made is not persuasive as this is hearsay evidence since DB did not hear the landlord or agent make the promise, but only heard it from the tenant. I find insufficient evidence to show that the landlord promised to subsidize the utilities. I find that the tenant agreed to pay for utilities that would be divided between the occupants of the residential property and as the tenant was aware that she would be solely responsible until other people moved into the property and as there is insufficient evidence to show that it was unconscionable to require the tenant to pay for all the utilities when she was the only party consuming them, I find that the tenant is responsible for the utilities as laid out in the landlord's summary. I award the landlord \$255.59.

Residential Tenancy Policy Guideline #1 provides that when a tenant has resided in a unit for 1 year, they are expected to shampoo the carpet. In this case, the tenancy lasted for less than 6 months, but I accept that the carpet had to be cleaned thoroughly after the bedbug treatment and as I have found that the tenant was responsible for the bedbug infestation, I find that she should bear the cost of the carpet cleaning. I award the landlord \$65.00 for carpet cleaning.

The landlord provided no evidence such as photographs or witness statements to show the condition of the room at the end of the tenancy. The tenant is responsible to leave the rental unit in reasonably clean condition and absent direct evidence showing that the room required additional cleaning, I am unable to find that the tenant did not meet her obligation under the Act. I therefore dismiss the claim for \$50.00 in cleaning costs.

As both parties have enjoyed success in their claims, I find they should each bear the cost of their own filing fees.

The tenant has been awarded \$650.00 and the landlord has been awarded \$907.61. Setting off these awards as against each other leaves a balance of \$257.61 owing by the tenant to the landlord. I grant the landlord a monetary order under section 67 for \$257.61. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is awarded \$650.00 and the landlord is awarded \$907.61. The landlord is granted a monetary order for the balance of \$257.61 which remains owing after set off.

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: October 16, 2015

Residential Tenancy Branch

This decision is amended pursuant to section 78(1) of the Residential Tenancy Act this 6th day of November, 2015.

