



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, ff

Introduction

The tenant applies for several monetary claims from the landlord.

I accept that the landlord was properly served with notice of the hearing and the tenant's original application, by way of registered mail. I accept the tenant's testimony that she tracked this package, and learned that it had been picked up. The tenant also served a subsequent amendment to her claim to the landlord by way of registered mail to the same address. The landlord confirms this package was received.

The landlord also agreed to proceed with the hearing, even though the second package had only been received recently.

Issue(s) to be Decided

Is the tenant entitled to the various portions of her monetary claim as against the landlord?

Background and Evidence

This tenancy began August 1, 2015, and ended December 28, 2015. The monthly rent was \$2,999.00 due on the first day of each month. A security deposit of \$1,500.00 was paid in late July, 2015. The tenant ran a small, unlicensed day care business in the premises, and testified no license was needed if there were only two children in day care.

The tenant discovered a rat problem in the home. No mention of this appears in her email to the landlord of November 2, 2015, but her email to a pest control company on November 29, 2015 indicates that "it's been weeks" since she informed the landlord. He would not authorize pest control to be retained, and the tenant finally arranged for pest control herself who began their work December 2. The landlord then paid the cost of this pest control. Repairs to holes in the roof was required, and the attic contained significant rat feces, and evidence of a longstanding problem.

In the meantime, however, rat feces and urine were discovered on the tenant's futon and some garments, and were beginning to eat the tenant's food. A large rat was seen in the tenant's bedroom. The tenant couldn't sleep properly after that, and couldn't leave food out. She had to throw out her futon, and launder numerous articles. She did not pay all her rent for December and was served a 10 day to end tenancy. On December 28, 2015 a Mutual Agreement to End Tenancy was signed, and the tenant moved out that same day. She provided her new forwarding address in writing then, but has not received her deposit from the landlord.

The tenant claims for loss of revenue in her day care business, alleging the rat problem prevented her from expanding her business. She claims for the cost of the futon and the laundry expense. She seeks various moving expenses, and the cost of paying a new security deposit for another tenancy. She seeks compensation for stress and anxiety. She seeks compensation for

having to reside in premises that was not properly maintained. She seeks recovery of her security deposit, doubled.

The landlord disputes the tenant's claim. He submits that the landlord paid for pest control, which provided service within a reasonable time frame, and whose work is guaranteed. As the pest issue was taken care of, he submits that the various losses claimed that are attributable to the rat issue, or costs related to moving, are therefore not the landlord's responsibility to pay. He acknowledges that the deposit was not returned, but notes that not all December rent was paid, and contends that he was forced to sign the Mutual Agreement to End the Tenancy, as the tenant and her boyfriend indicated they otherwise not leave.

Analysis

Section 32(1) of the Act requires a landlord to 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. I accept that an infestation of rats was present in the premises, and that there was evidence that this was not merely a recent problem. I find that the landlord was advised of the problem in early November, yet declined to take steps for several weeks. This was a breach of the landlord's responsibilities under section 32(1).

Portions of the tenant's claim are compensable, while others are not, as follows:

1. The tenant testified that she did not require a license as long as her day care had only 2 children. In the absence of any application for a license, I therefore decline to award compensation for loss of revenue due to the tenant's inability to expand her daycare. In fact such expansion was prohibited by a failure to be licensed for such expansion.
2. The loss of the futon and the need to launder the potentially contaminated clothing must be borne by the landlord, as I find the landlord's failure to provide a rat-free environment, and his delay in addressing the problem caused this damage. The estimated cost of a new futon of \$700.00 is not supported with any evidence, and I note the old futon had been used for years. I am able therefore to award only the nominal sum of \$100.00. The \$100.00 estimate for the cost of laundering is reasonable, and is also awarded.
3. The tenant voluntarily signed a Mutual Agreement to End the Tenancy, and insisted the landlord also sign it. I note that she had already received a notice to end her tenancy by then. These factors demonstrate that the tenant's move was not primarily due to the rat issue, and I decline to order recovery of her moving expenses or new security deposit from the landlord.
4. The tenant seeks an order for compensation related to the landlord's failure to make repairs. There is no evidence of any claim being filed to repair to the premises, or that other than the rat issue that the landlord failed to address reasonable repair requests. The claim is unproven, and no award is appropriate.
5. I accept that the tenant suffered some stress, fear and anxiety as a result of the rat infestation. As there is not supporting medical evidence however, I am unable to assess the severity of such suffering. I therefore am restricted to issue a nominal award in the sum of \$100.00.

6. The tenant's costs of printing, ink and postage to file her claim are her own, and not the landlord's to bear.
7. In terms of the claim for recovery of the security deposit, in most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)). There is no right of the landlord to withhold the security deposit as a result of the tenant's failure to pay December rent, unless a formal claim was filed within the 15 day window. There is no evidence before me that any of the exceptions to the landlord's obligations under section 38(1) apply in this case. There is no evidence that any statutory grounds extinguish the tenant's right to claim the deposit. Accordingly, as a result of the landlord's failure to return the deposit, I find the tenant entitled to double the deposit, which is \$3,000.00.
8. As she is successful in her claim, the tenant is also awarded recovery of the filing fee of \$50.00.

Conclusion

The total sum awarded to the tenant is \$3,350.00. A monetary order in this sum, payable by the landlord to the tenant, is issued.

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: January 28, 2016

Residential Tenancy Branch

