



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: MNDC, MNR, OLC
Landlord: MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting a monetary order for damage to the rental unit; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement; and to recover the cost of the filing fee for the hearing.

The Tenant filed for a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; for a monetary order for the cost of emergency repairs; and for the Landlord to comply with the Act.

Both parties appeared at the hearing. The Tenant was assisted by G.T and S.C. from the Public Guardian and Trustee of British Columbia. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Landlord stated they wish to reduce their claim from \$450.00 to \$350.00.

The Tenant submits that a USB drive containing color photographs was provided to the Residential Tenancy Branch (RTB). The Landlord confirmed that they have received a copy of the photographs from the Tenant. However; there is no USB drive within the Tenant's file that is before me. The Tenant's representative G.T. asked that the hearing proceed and stated she would provide another copy of the photographs after the hearing ended. The hearing proceeded and the RTB received a USB stick containing the digital photographs on September 2, 2016.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit in partial satisfaction of his claim?
- Is the Tenant entitled to money owed or compensation for damage or loss?

Background and Evidence

The Parties testified that the tenancy began on December 1, 2012, as a 1 year fixed term tenancy that continued thereafter as a month to month tenancy. Both parties agreed that at the end of the tenancy, rent in the amount of \$653.95 was to be paid on the 1st day of each month. Both parties agreed that the Tenant paid the Landlord a security deposit in the amount of \$312.50.

The Tenant testified that she gave the Landlord written Notice that she would be vacating her suite as of March 31, 2016, and she moved out of the rental unit on March 7, 2016.

The Landlord testified that they purchased the rental building and took over in January 2015. The Landlord submits that the rental building contains 350 units.

The Landlord's Claim

The Landlord testified that after the Tenant moved out, they had to replace a broken bedroom door with in the Tenant's unit. The Landlord provided documentary evidence of an invoice for the repair of the Tenant's unit. The invoice indicates a cost of \$50.00 for a bedroom door. The Landlord is claiming \$100.00 for the replacement of the door.

The Landlord submitted that the \$100.00 includes the cost of labour for installing the door. The Landlord referred to a photograph that he submitted as evidence showing a door with a big crack in it.

The Landlord testified that the Tenant left the rental unit dirty and full of garbage. The Landlord is claiming \$150.00 for garbage removal and an additional \$100.00 for the disposal of the garbage. The Landlord testified that it took two people three hours to clean the unit and a cost of \$25.00 per hour per person.

The Landlord testified that they charge all Tenants a fee of \$100.00 for disposal of furniture and items. The Landlord did not provide a copy of a receipt or documentary evidence of the policy to charge Tenants the \$100.00 fee.

The Landlord provided color photographs of the rental unit after the Tenant moved out that show the garbage, furniture and other possessions that were left behind by the Tenant. The Landlord made specific reference to photograph #15 that shows a picture of the stove. The Landlord questioned the kind of care that was provided to the Tenant, when the stove was this messy.

The Landlord is requesting to keep all of the \$312.50 security deposit in partial satisfaction of the claim for \$350.00.

In reply, the Tenant's representative submitted that after the Tenant left the Landlord completed extensive renovations on the rental unit. The Tenant submitted that only the amount of \$50.00 for the door is appropriate as labour is not identified on the invoice.

In response to the Landlords claim for cleaning costs, the Tenant submitted that there were hundreds of cock roaches in the unit and no service would attend to clean up because of the cock roach infestation. The Tenant had nobody to help. She could not return to the unit herself and she had a friend attend the move out inspection.

The Tenant's counsel testified that they sent the Landlord a letter at the end of the tenancy, but the letter did not include a request that the Landlord forward the security deposit to the Public Guardian and Trustee of BC.

The Tenants' Claims

The Tenant submitted that the Landlord has failed to provide an apartment that complies with health and safety standards. The Tenant submitted that the rental unit was infested by cockroaches and the cockroaches were an ongoing problem in the

rental unit. The Tenant submitted that the Landlord treated the rental unit in November 2014; February 2015; April 2015; and June 2015; however the cockroaches remained a problem and the Landlord failed to deal with the issue from June 2015, until March 2016, when the Tenant moved out.

The Tenant submitted that the cockroaches started to invade all parts of her rental unit and it was not until March 2016, 9 months after the Tenants request to deal with the problem, that the Landlord took action to treat the problem. The Tenant referred to documentary evidence of a Work Order report dated March 8, 2016, that states there is heavy infestation of cockroaches in the Tenants unit.

The Tenant submitted that she sent the Landlord two letters regarding the cockroach problem. The Tenant has provided a copy of two letters addressed to the Landlord. One letter is dated November 8, 2015, and the other letter is undated but the Tenant submitted it was sent to the Landlord on July 21, 2015. In both letters the Tenant states there is a cockroach problem her unit and she requests the Landlord to send an exterminator.

The Tenant submitted that the many months of having to live with the cockroaches took a serious emotional and physical toll on her. The Tenant submitted that she suffered an anxiety attack on March 6, 2016, and attended a hospital for treatment. The Tenant has provided documentary evidence of a patient visit summary showing that she attended the hospital due to an anxiety attack due to cockroaches all over her house.

The Tenant has provided a letter dated April 6, 2016, from an Occupational Therapist who was working with the Tenant. The letter indicates that the Occupational Therapist ("the OT") became aware of the cockroach problem in November 2015, when the Tenant informed her that there were cockroaches all over the walls and in her kitchen cupboards.

The letter states that the Tenant informed the OT that the presence of cockroaches in her suite was impacting her ability to eat and sleep. The letter states that the Tenant called the OT on March 7 2016, and stated that she can no longer tolerate remaining in her suite. She was not eating and having great difficulty sleeping.

The letter goes on to state that the Tenant stayed in a hotel for five nights and did not return to her suite thereafter. The letter from the OT states that in her professional opinion, the cockroach infestation impacted the Tenant's ability to take care of her most fundamental and basic needs – sleeping and attaining adequate nutrition which impacted the Tenants ability to focus on her daily activities and responsibilities.

The Tenant provided digital photographs and videos showing the infestation of the cock roaches.

The Tenant testified that a cleaning service was hired to assist her and help her keep the unit clean. The Tenant submitted that the cleaning service was in place from September 24, 2015 until January 23, 2016.

The Tenant submitted that when she left the apartment due to her distress, she was able to take very few belongings with her. The Tenant took a china cabinet and television which were infested with cockroaches and required treatment. The Tenant submits that she paid \$200.00 to treat the furniture and she has provided a receipt for the treatment of the furniture.

The Tenant submitted that she was too overwhelmed to return to the rental unit and spent five nights at a hotel from March 7 -11, 2016. The Tenant provided receipts for the cost of the hotels.

The Tenant submitted that she wrote to the Landlord when she left the apartment to advise that she was ending her tenancy due to the cockroaches. She submitted that she wrote again on March 29, 2016, to advise that she was unable to return to the rental unit to remove the remainder of her belongings. The Tenant submitted that when she tried to locate a company to remove her belongings for her, they refused due to the cockroach infestation.

The Tenant has provided documentary evidence of an undated letter to the Landlord that states she is vacating her suite as of March 31, 2016, due to the Landlords continued violations of the Residential Tenancy Act. The Tenant has provided documentary evidence of a letter dated March 29, 2016, which states she has to leave everything behind because she was unable to arrange removal.

The Tenant has submitted a Decision of an Arbitrator where the Arbitrator found that the Tenant was entitled to be compensated the amount of \$250.00 per month for living with a cockroach problem. The Tenant requests the same monthly compensation for 9 months of inactivity by the Landlord.

The Tenant is requesting to be compensated in the following amounts:

Furniture treatment	\$200.00
Hotel accommodation	\$631.20
Security deposit	\$312.50
Abandoned furniture	\$50.00
Compensation for 9 months	\$2,250.00

In response to the Tenant's claim, the Landlord testified that cleanliness and hygiene is very important to the successful treatment of cockroaches. The Landlord submitted that the Tenant has a history of having an unclean rental unit. The Landlord testified that they purchased the building in January 2015, and the previous Landlord had issues with the Tenant's cleanliness.

The Landlord provided a letter dated October 16, 2013, addressed to the Tenant's unit that states the Tenant's suite is not clean and does not meet the acceptable standards as required by the Act.

The Landlord submitted that they have been trying to work with the Tenant since they took over despite the fact that she does not have the proper level of sanitation or hygiene. The Landlord submitted that the Tenant has failed to do her part, and that her neighbours on either side of her do not have any infestation in their suites.

The Landlord submitted that a few days after the Landlord took over the building the Tenant's unit was treated for bed bugs. The Landlord submitted that Notice of entry was given in February 2015, for an inspection related to cockroach treatment. In April 2015 the Landlord provided a Notice of entry and preparation sheet for cockroach treatment.

The Landlord submitted that in May 2015, the pest control technician advised the Tenant to do better cleaning and sanitation for the suite, and to keep cat food, water and litter on the balcony or bedroom so cockroaches would not go for the bait. The Landlord submitted it was emphasized that treatment would not be successful if the suite was not cleaned and well prepared for the treatment.

The Landlord submitted that in June 2015, a maintenance worker went into the Tenant's unit to perform a repair and found the Tenant's unit to be cluttered with cat food and litter everywhere. The Landlord submitted that pictures were taken at that time and the Landlord has provided photographs as evidence. The photographs provided by the Landlord are black and white photocopies of poor quality.

The Landlord submitted that on August 17, 2015, the Landlord entered to complete a repair and found the Tenant's unit to be dirty, messy, with left-over food and dirty dishes everywhere. The Landlord submitted that they sent the Tenant a letter stating that her suite needs more cleaning.

The Landlord has provided a copy of a letter to the Tenant dated August 21, 2015, stating that the suite should be de-cluttered and cleaned before any treatment could be done and that a suite inspection would take place on August 29, 2015. The Landlord submitted that the inspection on August 29, 2016 found that the unit was not properly cleaned.

The Landlord submitted that during the period of time between September 2015, to November 2015, they did not receive any complaints from the Tenant in regards to her unit. The Landlord submitted that in October 2015, the Tenant gave the Landlord a gift because she was thankful that the new management was helping Tenants to acquire a decent living.

The Landlord testified that they never received a letter from the Tenant regarding cockroaches on or around July 21, 2015.

The Landlord submitted that they received a letter from the Tenant on November 8, 2015, stating that the cockroach problem that the Landlord stopped treating is now a large problem again. The Landlord submitted that they contacted the Tenant on November 10, 2015, and made a plan regarding the treatment of her suite.

The Landlord provided a copy of a Notice of Entry dated November 15, 2015, that states the Landlord will be entering the Tenants suite on November 17, 2015, for the purpose of an inspection.

The Landlord also submitted that they provided the Tenant with a Pest Control / Prevention document from the Pest Control Company. The document provides instruction for preparation prior to treatment. The Document includes that cockroach control requires strict sanitation. Food waste containers to be emptied frequently and limited standing water sources.

The Landlord submitted that the inspection was conducted and the suite was found to be unsanitary. The Landlord testified that a letter dated November 26, 2015 was posted on the Tenant's door on November 26, 2015. The Landlord has provided a copy of a letter dated November 26, 2015, that states the rental unit was inspected and was found to be unsanitary. The letter states:

“You must take immediate action and have this done by December 4, 2015 or else your suite CANNOT be treated for cockroaches..... You need to cooperate and work with us in order to get rid of the problem. Please inform us when you are able to have your unit 100% ready...” [reproduced as written]

The Landlord submitted that they sent the Tenant a follow up letter on December 18, 2015, because they did not hear back from the Tenant. The Landlord submitted that this letter was posted on the Tenant's door on December 18, 2015.

In this letter the Landlord asks the Tenant to please inform them when she is able to have her unit 100% ready. The Landlord submitted that they included another copy of the Pest Control / Prevention document from the Pest Control Company. The document provides instruction for preparation prior to treatment.

The Landlord submitted that on March 8, 2016, a Notice of Entry with prep sheet was given to the entire section of tenants for follow up treatment and inspections.

The Landlord stated that on March 9, 2016, the Tenant came to the office and gave insufficient Notice to vacate the suite on March 31, 2016, due to cockroach infestation. On March 29, 2016 the Tenant came to the office and submitted a letter stating that her failure to remove the contents of her suite was due to the cockroach issue.

The Landlord stated that on April 1, 2016, a friend of the Tenant returned the keys to the unit to the Landlord and stated that the Tenant will not be available for the move out inspection. The Landlord submitted that they took photographs of the furniture and garbage she left in her suite. The Landlord has provided 32 photographs of the rental unit at the time of the move out.

The Tenant responded to the Landlords submissions by submitting that she never received the letters from the Landlord dated November 26, 2015, or December 18, 2016, that the Landlord states they were posted to her door.

Analysis

Section 7 of the Act states:

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance

with this Act, the regulations, or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Based on all of the above, the evidence and testimony, of the Landlord and Tenant and on a balance of probabilities, I find as follows:

The Tenant's Claims

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32(2) of the Act states that a Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the Tenant has access.

I find that the problem of cockroaches in the Tenant's unit was an ongoing issue that existed before the Landlords purchased the building in January 2015. I also find that the previous Landlord had concerns with the Tenant's standard of cleanliness as far back as October 2013. I accept the Landlord's evidence that cockroach control requires strict sanitation. Food waste containers are to be emptied frequently and there should be limited standing water sources.

I find that the Tenant's digital photographic and video evidence clearly shows that there was a significant cockroach infestation in the rental unit. However I also find that the Tenant's photographic and video evidence shows that the rental unit is extremely unclean. The photographs show that the floors were dirty, including pet hair, dirt and food. The photographs showed that there was food on the floors including spaghetti noodles, macaroni, and pet food. The inside of cupboards appeared to be dirty. Some

of the video files also show that the rental unit was unclean. The area around the toilet was dirty and the oven was filthy.

The Landlord's color photographs also show that the rental unit was extremely messy and dirty. I find that the photograph of the oven shows the outside and inside of the oven and stove top was extremely unclean.

I find that the Landlord has been responsive to treating the Tenant's unit for cockroaches. The Tenant's evidence is that the Landlord treated the Tenant's unit for cockroaches in February 2015, April 2015, and June 2015. I prefer the Landlord's evidence that he was actively engaged in trying to treat the cockroach problem in the Tenant's unit. The Landlord responded to the Tenant's concerns about the cockroaches by providing Notices of entry to inspect the Tenant's unit prior to having pest control treat the unit. I find that the Landlord followed through with inspections and also followed up with the Tenant by sending letters that the Tenant needed to cooperate with the Landlord and have the unit in a clean condition prior to treatment.

Despite the Tenant's testimony that she never received two letters from the Landlord, she did not provide any evidence that she followed up with the Landlord on the status or progress of the cockroach treatment.

I prefer the evidence from the Landlord and the photographic and video evidence from the Tenant that the rental unit was not in a clean enough state for to allow for the pest control treatment. The Tenant did not take reasonable steps to minimize the loss pursuant to section 7 of the Act.

I find that the Tenant failed to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and I dismiss the Tenant's claim to be compensated in the amount of \$2,250.00 for living with the cockroach problem.

Section 45 of the Act states that a Tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

With respect to ending a tenancy due to a breach of a material term, section 45 (3) of the Act states that if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the

Tenant gives written notice of the failure, the Tenant may end the tenancy effective on a date that is after the date the landlord receives the Notice.

Residential Tenancy Policy Guideline # 8 Unconscionable and Material Terms states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

I dismiss the Tenant's claim to be compensated for staying at a hotel for five nights.

The Tenant stayed at Hotels for five nights beginning on March 7, 2016.

On March 9, 2016, the Tenant gave written Notice to end the tenancy effective March 31, 2016. I find that the Tenant's Notice was insufficient pursuant to section 45(1) of the Act. I also find that the Tenant did not give proper notice to end the tenancy for a breach of a material term pursuant to section 45(3) of the Act.

The Tenant ended the tenancy, rather than providing the Landlord an opportunity and a reasonable amount of time to fix the problem prior to the tenancy ending. The Tenant is not entitled to be compensated for these costs as there is insufficient evidence that the Landlord breached a material term of the tenancy and I find that the Tenant contributed to the cockroach problem in the rental unit. The Tenant's claim for \$631.20 is dismissed.

Due to my finding that the Tenant contributed to the cockroach problem by failing to take reasonable steps to minimize the loss, I dismiss the Tenant's claim to be compensated for the treatment of her furniture and for the furniture she abandoned. The Tenant's claim for \$250.00 is dismissed.

Section 64 of the Act states that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

With respect to the Tenant's submission regarding the Decision by an Arbitrator to award compensation to a Tenant due to living with cockroaches, section 64 of the Act states that I must make the decision on the merits of the case and evidence, and I am not bound to follow other decisions. I note that the facts considered by the Arbitrator

and the decision of the Arbitrator are or may be different from this case. The Arbitrator found that the Landlord was aware of the cock roach problem and did not take any steps to deal with the problem for six months of the tenancy, whereas in this case, I find that the Landlord has taken steps to deal with the problem and I find that the Tenant did not take reasonable steps to minimize the loss.

Section 33 of the Act states that a Tenant may have emergency repairs made only when specific conditions are met.

The Tenant's Application included a request for monetary order for the cost of emergency repairs; however, she did not identify that she has incurred any costs for emergency repairs.

The Landlords Claims

Section 37 of the Act states that when a Tenant vacates a rental unit, the Tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the Tenant failed to clean the rental unit at the end of the tenancy. The Landlord's photographs taken at the end of the tenancy show a large amount of garbage and household possessions that the Landlord needed to remove and dispose of. While the Landlord did not provide a copy of the policy that Tenants have to pay a flat fee of \$100.00 for disposal of furniture and items, I find the amount claimed by the Landlord to be reasonable based on the photographic evidence of the large volume of garbage and possessions that the Landlord removed and disposed. The Landlord is also claiming \$150.00 for the time it took to remove the garbage from the rental unit. I award the Landlord \$250.00 for the removal and disposal of furniture and garbage.

I award the Landlord \$100.00 for the replacement of the door. I find that the Tenant is responsible for the damage to the door and therefore for all costs related to its replacement. I accept that the replacement door cost \$50.00 and I find the Landlord's testimony that the labour cost of \$50.00 for installing the replacement door is a reasonable claim.

Section 38 of the Act states 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 repay any security deposit or pet damage deposit to the Tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Tenant did not provide a written forwarding address to the Landlord for the return of the security deposit. The Landlord was not required to have returned the security deposit to the Tenant prior to the hearing. I order that the Landlord can keep the security deposit in the amount of \$312.50 in partial satisfaction of the Landlord's claim.

The Landlord has established a claim in the amount of \$350.00. Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was successful with his claim and I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord is entitled to \$450.00. After setting off the security deposit of \$312.50, the Tenant owes the Landlord \$137.50. I grant the Landlord a monetary order in the amount of \$137.50. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

Based on the above, the Tenant's application is dismissed.

I grant the Landlord a monetary order against the Tenant in the amount of **\$137.50**. The order must be served on the Tenant and may be enforced in the Provincial 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: September 29, 2016

Residential Tenancy Branch