



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary award, including the return of their security deposit. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord did not attend although he was served with the application and Notice of Hearing by registered mail sent on December 30, 2015.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?
Are the tenants entitled to an award for the return of their security deposit?

Background and Evidence

The rental unit is a strata title apartment in North Vancouver. The tenancy began in 2013. The tenant testified that she was forced to move out of the rental unit due to a bedbug infestation. The tenant claimed damages for the cost to treat bedbugs, for cleaning and disposal of items including mattresses and for the replacement cost of furniture, including a bed, dresser and couch. She submitted a monetary order worksheet setting out her claim for the following:

• Tenants' security deposit:	\$775.00
• Cleaning products:	\$17.61
• mattress bags:	\$29.00
• New bed & pillows:	\$1,341.73
• New Duvet:	\$199.99
• New couch:	\$949.00
Total:	\$3,981.61

The tenant testified that she started to get bites on her arms in late July. She reacted to the bites and became ill. She first discovered a bedbug in her bed on August 7th. She consulted a pest expert and reported the bedbug discovery to the landlord. She wrote

to him on August 8, 2015 and asked him to immediately contact the property manager and arrange for treatment of the rental unit and surrounding units. On August 10th the property manager sent an e-mail communication to occupants of the strata property to advise that a pest control company with sniffer dogs would be attending to perform and inspection.

The tenant said she learned that the strata unit adjacent to the rental unit was the likely source of the infestation. On August 15, 2015 the tenant s wrote to the landlord to advise that they would not renew their tenancy agreement and would move on the end of tenancy date stated in the agreement, namely: September 1, 2015. The tenant complained that the strata management had not taken effective measures to treat and eliminate the problem. According to the tenants' written submissions an inspection was performed on August 24, 2015. The tenant was advised that the rental unit was treated by a pest control company on August 28, 2015, but by that time the tenants had already vacated the rental unit and returned keys to the landlord by mail. The tenants submitted a copy of the strata council meeting minutes wherein it was noted that the strata unit adjoining the rental unit was the source of the bedbugs.

The tenants sent the landlord a letter dated October 4, 2015. The tenant included a statement in the letter setting out amounts claimed for cleaning products, disposal costs and costs for replacement furniture. The tenants also requested the return of their security deposit and they provided the landlord with their forwarding address in writing.

Analysis

The tenants' claim for compensation is predicated upon their contention that the rental unit became infested with bedbugs due to some fault or failure of the landlord. The tenant has claimed for her out of pocket expenses as well as amounts for loss of quiet enjoyment of the rental unit. The landlord may have a positive obligation to treat bedbugs when they are discovered so as to prevent their multiplication and transmission to other units, but the obligation to treat does not amount to a finding of fault or liability to compensate a tenant without proof that the landlord has been negligent in dealing with the problem or in failing to treat an existing infestation after becoming aware of it.

Upon the evidence presented, I find that the evidence does not establish that there was any negligence on the part of the landlord. The fact that the bedbugs spread from the neighbouring unit and may have been due to the behaviour of the occupants of that unit, does not lead to a finding that the landlord or the strata corporation was negligent. There was insufficient evidence to establish that the landlord knew or ought to have known of the problem before it was discovered in the rental unit.

Absent evidence to establish fault on the part of the landlord, there is no basis for the tenants' claim for compensation for out of pocket expenses or for replacement furniture and these claims are denied.

The tenants do have valid claim for the return of their security deposit.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenants provided the landlord with her forwarding address in writing given by letter dated October 4, 015. I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$1,550.00 being double the amount of their deposit. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,600.00 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenants' claim has been allowed in the amount stated.

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 02, 2016

Residential Tenancy Branch

