



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Imperial Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

This hearing dealt with the female tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; her legal counsel and witness and two agents for the landlord.

During the hearing the landlord referred to documents he had provided to the tenant that he also stated he served to the Residential Tenancy Branch (RTB). The landlord provided a registered mail tracking number that he stated was for the evidence he sent to the RTB, however, the information provided by Canada Post for that tracking number shows it was delivered to a community that is different from any RTB office in the province.

The female tenant's legal counsel acknowledged receiving documents from the landlord. As a result, I ordered both parties to submit to me, after the hearing copies of these documents. Both parties did submit documents and I am satisfied that I have received all the same documents from each of the parties.

While I note the tenant's original submission indicated that she sought a refund of the security deposit; pecuniary damages to replace belongings discarded due to uncontrolled infestation; general damages for pain and suffering; and costs, the tenant's legal counsel clarified at the start of the hearing that they were only pursuing a portion of the security deposit and pecuniary damages to replace discarded belongings. Counsel stated that they were not pursuing a claim for pain and suffering.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence the following documents:

- A copy of a tenancy agreement for a month to month tenancy beginning on October 1, 2014 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid. The tenancy ended November 30, 2015.
- A Monetary Order Worksheet outlining the tenant's claim for a security deposit refund of \$400.00; compensation for discarded merchandise in the amount of \$7,612.00; and compensation for extra laundry costs in the amount of \$312.00;
- A copy of a "Guide to Bed Bug Control" produced by the local health authority;
- A copy of an affidavit from the tenant's witness that included a breakdown of the specific items claimed for under the category of merchandise and the laundry costs noted in the Monetary Order Worksheet;
- A copy of a letter dated February 12, 2016 from the tenant's daughter providing the landlord with the tenant's forwarding address; and
- Several receipts and estimates for items discarded; and photographs.

The tenant originally sought return of the security deposit in the amount of \$400.00 however; the female tenant acknowledged receipt of a cheque from the landlord in the amount of \$200.00 after the tenant's Application for Dispute Resolution had been filed.

The female tenant also acknowledged receipt of a letter from the landlord with the cheque indicating that explaining that the landlord could only return \$200.00 of the deposit because that was the amount that she paid while the male tenant paid the additional \$200.00.

The letter went on to explain that the male tenant "signed move out papers and received \$20.00 dollars." [reproduced as written]. The remaining portion of \$180.00 was retained and applied to cleaning efforts that male tenant had agreed to.

The parties agreed that the rental unit had a problem with bed bugs at all relevant times related to this claim.

The tenant submitted that she had complained to the landlord on several occasions about the bed bug problem and that each time he came to her unit and sprayed the unit with a can of aerosol insecticide but he did not contact a qualified pest control technician, as suggested in the Guide to Bed Bug Control. The tenant also submitted the landlord, at no time, provided her with any information on how to prepare the rental unit for treatment as suggested in the Guide.

The tenant submitted that as a result she incurred significant losses in the form of costs to complete additional laundry during the time of the infestation and the costs to recover items that she had to discard because of the infestation.

The tenant submitted through her witness's affidavit that she completed additional washings of clothing daily or almost daily from June 2015 to November 2015. The tenant seeks compensation in the amount of \$2.00 per day for 180 days less her usual laundry costs of \$48.00 for that period or a total of \$312.00.

The tenant also seeks, as per the witness's affidavit, the following compensation for items that had to be discarded at the end of the tenancy:

Description	Amount	Estimate/Receipt
Mattress/box spring/mattress pad	\$968.00	Receipt – dated December 2011
Area Rug	\$80.00	Estimate – Craigslist
Bookcase	\$39.00	Estimate – Ikea
Portable air conditioner	\$673.00	Receipt – dated June 2015
Dresser/night tables	\$450.00	Estimate – Craigslist
Kitchen Table/Chairs	\$250.00	Estimate – Craigslist
Dishwasher	\$75.00	Estimate – Craigslist
Duvet	\$160.00	Estimate – Canadian Down & Feather Co
Duvet cover and sheets	\$120.00	Estimate – North Home Studio
Bamboo Sheet Set	\$140.00	Estimate – Costco
Pillows	\$60.00	Estimate – Costco
Couch	\$100.00	Estimate – Craigslist
Vacuum	\$250.00	Estimate – Craigslist
Coffee table/end tables	\$150.00	Estimate – Craigslist
Rocking chair	\$35.00	Estimate – Craigslist
Amplifier	\$223.00	Receipt – dated October 2009
Network Receiver	\$339.00	Receipt – dated June 2015
Television	\$1,500.00	Estimate – The Brick
Clothing – full wardrobe	\$2,000.00	Estimate – Statistics Canada –Average Household Expenditure Table – 2013
Total	\$7,612.00	

The tenant submitted that they discarded the items because they wanted to ensure that bedbugs were not being transported to her new location.

The landlord submitted that the tenant had only complained once about the bed bug problem. He agreed that he initially sprayed the unit with an insecticide in hope of containing the problem until he could have a qualified technician attend and treat the rental unit properly.

The landlord stated that he had contacted a professional pest control company and that when he later contacted the tenant she refused to agree to a treatment time proposed by the landlord and was not allowed to set a time to do so.

The landlord also submitted that at the end of the tenancy the male tenant had hired a truck and that all items were taken from the property on the truck and he has no way of knowing what, if any of the tenants' belongings may have been discarded.

In regard to the tenant's claim for return of the security deposit the landlord submitted he did not return the deposit to the tenant after receiving the letter from the tenant's daughter because he had not had any contact from the tenant herself and as such was could not return the deposit.

The landlord testified that as soon as he received the tenant's Application for Dispute Resolution he returned the tenant's portion of the security deposit. He confirmed he provided \$200.00 to the female tenant and \$20.00 to the male tenant as per the male tenant's agreement with the landlord. The landlord did not provide any written agreement between himself and the male tenant in regard to the disposition of the security deposit or documentary evidence to confirm that he paid the male tenant any amount of the deposit.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit in full; less any mutually agreed upon (in writing) amounts; or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Residential Tenancy Policy Guideline 13 outlines that a tenant is the person who has signed a tenancy agreement to rent residential premises. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

The Guideline goes on to say co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Specifically the Guideline clarifies a security deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit.

Based on Guideline 13, I find that the security deposit of \$400.00 was paid on behalf of the tenancy and not the individual tenants. As such, I also find that the landlord did not

have the right to treat the security deposit, at the end of the tenancy, as two distinct deposits to two separate tenants.

As such, when the landlord returned the deposit he was required to return the entire deposit less any mutually agreed upon amounts. That mutual agreement must be in writing. As the landlord has provided no documentary evidence to support his position that he had permission from the male tenant, I find the landlord was required to return the entire deposit. As such, I find the tenant is entitled to \$180.00 for a portion of the balance of the deposit.

In addition, I find the landlord has provided no evidence to confirm that he has returned \$20.00 to the male tenant. As such, I find the tenant is entitled to an additional \$20.00 portion of the balance of the security deposit.

I concur with the landlord that the provision of the female tenant's forwarding address by the tenant's daughter without any indication that the daughter had authority to *Act* on behalf of the tenant was not sufficient provision of the tenant's forwarding address.

I find, however, that the landlord did return a portion of the deposit within 2 days of receipt of the tenant's forwarding address by way of her Application for Dispute Resolution. As a result, I find the landlord has complied with the requirements under Section 38(1) and the tenant is not entitled to double the amount of the deposit.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the landlord must 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 make it suitable for occupation by a tenant.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless:

- The tenant gives permission at the time of entry;
- At least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry;
- The landlord has an order from the director authorizing the entry;
- The tenant has abandoned the rental unit; or

- An emergency exists and the entry is necessary to protect life or property.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances different than that described by the first party, the party making the claim has the burden of providing additional evidence to support their position.

Based on the testimony of both parties I accept that the tenant informed the landlord on at least one occasion of a problem with bed bugs. I also accept that the landlord, in response, attended the rental unit and used a generic insecticide to treat the unit.

However, the landlord disputes the tenant's version of repeated reports to the landlord and in the absence of any evidence of such reports such as documentary reports in the form of emails, text messages, or hard copy letters I find the tenant has failed to establish repeated reports of the same problem.

Regardless, I am satisfied, from the landlord's testimony, that he was aware of the bed bug problem and failed to take appropriate action to rectify the problem contrary to his obligations under Section 32 of the *Act*.

I make this finding despite the landlord's testimony that he contacted a technician but could not set up a time to complete the treatment. Section 29 of the *Act*, as noted above, allows the landlord to enter the rental unit after they provide the tenant with written notice at least 24 hours in advance of the entry that the landlord intends enter the unit. The notice must include the purpose for entering, which must be reasonable and the date and time of entry.

As such, I find the landlord was obligated under Section 32 of the *Act* to take whatever steps were necessary to eradicate the bed bug infestation and pursuant to Section 29 the landlord was not restricted from gaining access to the rental unit to complete any required treatment.

I am not satisfied that landlord had contacted a qualified pest control technician. If such contact had been made, I find, on a balance of probabilities that the landlord would have been able to provide written instructions to the tenant on how to prepare the rental unit for treatment. No such, instructions were ever provided to the tenant.

As a result, I find the tenant has established the landlord has violated his obligations under the *Act*.

In regard to the tenant's claim for compensation for additional laundry charges during the bed bug infestation, I find the need for extra laundry is consistent with the recommendations put forth in the Guide to Bed Bug Control and is therefore a reasonable action for the tenant to take. I accept, on a balance of probabilities, the

tenant's calculation of \$312.00 to represent a reasonable expenditure to ensure her cloths were safe from the bed bug infestation.

As such, I find the tenant has established an entitlement to compensation in the amount of \$312.00 for laundry.

Considering the tenant's claim for compensation for discarding her personal property as described in the table above, I find the tenant has provided sufficient evidence to establish that she had 4 of the items she claims reimbursement for, including a bed; an air conditioner; an amplifier; and a network receiver, by virtue of the provision of receipts for purchases made either prior to or during the tenancy.

As to the remaining items, while the tenant has provided no direct evidence that she had these specific items during the tenancy I find they are standard household items and it is reasonable to assume that the tenants were in possession of these items during their tenancy.

However, I also find that the tenant has failed to provide sufficient evidence that there was a need to discard any of the items claimed or that, in fact, the articles were discarded. From the testimony of both parties all the tenants' possessions were removed from the property by male tenant.

The tenant submitted that she picked up the items from the male tenant after he had stored them for a period of time. The tenant did not provide any documentary evidence confirming which items may have been retrieved from the male tenant or the condition of these items and the need to discard them.

The landlord submitted that he could not know what was done with any of the items removed from the property. I accept the landlord's position that in the absence of any evidence as to what items were given to the female tenant from the male tenant or how the items were discarded, I find the tenant has failed to establish that she in fact discarded the items.

Therefore, I find the tenant has failed to establish she has suffered a loss for the specific items claimed.

Residential Tenancy Policy Guideline 16 states an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or

services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

While I have found that the tenant has failed to establish she has suffered a significant loss but that the landlord violated their obligations under Section 32 of the *Act* and in accordance with Policy Guideline 16, I find the tenant is entitled to nominal damages.

As a result of the failure of the landlord to comply with Section 32, and the subsequent result on the tenancy and the likelihood, on a balance of probabilities, that the tenant did require to discard a substantial amount of her belongings. I find a reasonable nominal award under these circumstances is \$1,000.00.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,612.00** comprised of \$200.00 security deposit owed; \$312.00 laundry costs; \$1,000.00 nominal damages and the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: October 21, 2016

Residential Tenancy Branch

