



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

MNSD, MNDC, FF, O (Tenant's Application)
MND, MNDC, MNSD, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed January 22, 2016 she sought a Monetary Order for money owed or compensation for loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, return of her security deposit and other unspecified relief. In the details of dispute section on her Application she indicated she sought return of rent paid, compensation for personal items and stress due to a cockroach infestation.

In the Landlord's Application for Dispute Resolution filed on June 9, 2016 the Landlord sought a Monetary Order for damage to the rental unit and compensation for loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing occurred over two days, August 30, 2016 and November 4, 2016. Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me. The names of the individuals in attendance at the hearings is noted on the unpublished cover page of this my Decision.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

2. Is the Landlord entitled to monetary compensation from the Tenant?
3. What should happen to the Tenant's security deposit?
4. Should either party recover the fee paid to file their respective application?

Background and Evidence

On the first day of the hearing, August 30, 2016, the Tenant testified on her own behalf as did K.S.

Introduced in evidence was a copy of the Residential Tenancy Agreement which confirmed the following: this tenancy began in late June of 2013; monthly rent was payable in the amount of \$900.00; and the Tenant paid a security deposit in the amount of \$450.00.

Tenant's Evidence

The Tenant testified that in September of 2014 she found cockroaches in her rental unit. She stated that she then spoke with the previous resident manager. She said they followed up in a timely manner, by hiring a pest control company (with whom they regularly do business) to do an assessment. The person hired confirmed that the cockroaches were in the rental unit.

The Tenant alleged that the origin of the cockroaches was from the suite across the hall from her, stating that when these renters moved out, two months later she had cockroaches.

The Tenant alleged that on more than one occasion the pest control workers came without notice and as such she was not prepared for treatment of her unit. She said in response she spoke to the resident manager about her concerns and asked that she be personally served with any such notices.

The Tenant then said that in November 2014 she had to unplug her smoke detector because it was going off all night. She stated that she believed that it was related to the cockroaches.

The Tenant further testified that she gave a letter to the Landlord telling them that if they did not resolve this by August 2015 she would be going to the RTB.

The Tenant stated the Landlord then hired a third party pest control company who were working across the street. She said finally the unit was sprayed after so many months of gel baiting the cockroaches. However, she claimed that the company who sprayed the unit were required to follow up three weeks later due to the fact that the spray deals with the live cockroaches, but not the ones that were in their egg-sacks. The Tenant said that no booking followed that.

The Tenant said that she decided to leave the rental unit as her lease was coming up at the end of November 2015 and she could not handle the cockroach infestation anymore as the rental

unit was no longer liveable. She confirmed that she decided not to take any of her things save and except for photos and some clothing as she claimed she was informed by the third party pest control company to dispose of her items to ensure the cockroaches did not come with her to her new rental.

The Tenant failed to provide in evidence any photos of her items which she claimed to have left in the rental unit. In terms of value claimed for these items, she stated that she used the cheapest amounts she could find for items sold on a popular buy and sell website.

The Tenant further stated that she agreed the Landlord had to hire someone to clean the unit, but she disputed the amounts charged for moving her items or storing them. She claimed that to her knowledge the Landlords simply threw her items out, and that she had on more than one occasion witnessed the Landlord throwing other renters' items over the balcony and on the ground.

The Tenant stated that she did not provide the Landlord with her forwarding address in writing.

The Tenant claimed that she spoke to the Landlord about breaking her lease and asked what the cost would be for her to leave. The Tenant stated that there was no suggestion that the Landlord would be willing to let her out of her lease considering the condition of the rental unit.

Landlord's Evidence

K.S. testified on behalf of the Landlords.

K.S. stated that the rental complex occupies two separate building with a total of 288 units and the building in which the rental unit was located had 90 units.

K.S. stated that for approximately 1.5 years the Tenant did not have any issues with cockroaches. K.S. also stated that no other unit had problems with cockroaches at the material time. K.S. then stated that the first time they heard about this was when the Tenant informed the Landlord on September 2, 2014.

K.S. testified that they contacted their pest control company to assess the situation. The company stated that this was a medium infestation. He further stated that the representative could not determine where the cockroaches originated from. He stated that 27 other units (the entire section in which the rental unit was located) were inspected as a precaution. K.S. stated that it took approximately 1 month to have all those units inspected.

K.S. stated that when the Tenant reported the problem they were not aware of the issue. He further stated that 289, the unit across on the 2nd floor, the unit across the hall and on the floor above had a significant problem which the Landlord believed was the origin of the cockroach problem. Introduced in evidence was a floor plan of the building.

Also introduced in evidence was a "Work Order/Resident Service Request" dated October 22, 2014 with respect to the unit below, 189, which was described as "problem unit" and in which the writer noted:

"...
Highest infestation – 100's crawling around (adult and nymphs) everywhere in the kitchen, closet, bathroom, ceiling etc. Applied gel bait treatment. Does someone live in the suite? Need to follow up in 1-2 weeks. But suite needs to be cleaned. Including bedroom and living room so that baseboard could be dusted with DE. In addition to refreshing the bait.
..."

K.S., stated that to his knowledge spraying would have caused the cockroaches to spread around more and that using gel bait causes them to remain in the unit. K.S. further stated that they never refused to spray the unit, but stated that the problem was that the Tenant was never prepared for the treatment.

This hearing convened on November 4, 2016 and on this date K.S. continued with his testimony.

He referred to a Notice to Vacate from unit 189 (which he advised is directly across the hall from the subject unit) which indicates those tenants moved out simply because their lease expired. This Notice to Vacate does not make any mention of cockroaches. K.S. submitted that he believed that the renters in 189 did not inform the Landlord of the infestation as they were afraid they would be financially liable for the expenses relating to treatment of the units.

Also introduced in evidence was a 1 Month Notice to End Tenancy for Cause issued November 14, 2014 relating to the renter in unit 289 (which was identified as the source of the cockroach infestation).

K.S. further testified that the entire rental building was treated and inspected. He stated that cockroaches are not easy to treat and a tenants' cooperation is a must. He said not only do the pest control have to go in and treat, but the tenants have to keep the unit clean.

K.S. claimed that the Tenant in the subject rental unit refused entry of the pest control workers as well as refused to keep her unit clean as required.

Also introduced in evidence was a copy of the Notice of Entry dated November 20, 2014. K.S. stated that this was a follow-up as the subject rental unit was first treated on October 29, 2014.

K.S. stated that the pest control people wanted to treat on November 28, 2014 but the Tenant was not ready for the treatment.

He stated that again the pest control people wanted to treat the unit on December 11, 2014 and the Tenant claimed she did not have notice of the Landlord's entry. Introduced in evidence was a copy of the Work Order/Resident Service Request (page 15/48) of the Landlord's evidence wherein the writer notes that the Tenant was not prepared for the treatment.

The Landlord then issued another Notice of Entry on December 17, 2014 for treatment on January 5, 2015 (16/48).

Also introduced in evidence was a Work Order/Resident Service Request dated December 17, 2014 which confirmed the Tenant let the pest control people in. He stated that the Tenant was once again not prepared for the treatment. A follow up was scheduled for January 21, 2015.

K.S. stated that if the Tenant was cooperating and cleaning the infestation should have gotten better, not worse. Introduced in evidence was a Work Order/Resident Service Request dated January 19, 2015 which noted "high infestation". Again the writer notes that the Tenant was not prepared. K.S. submitted that had the Tenant cleaned and used the gel bait this should have resolved the issue.

Also introduced in evidence were copies of the Work Order/Resident Service Requests for unit 185, 187, 285, 286, 287 showing that those units had little or no activity. K.S. submitted that this is evidence that the other units were cooperating, cleaning and using the gel baits as instructed and therefore the infestation was decreasing. The Tenant, on the other hand, had an increase in activity, as she refused to cooperate.

Also introduced in evidence was a Work Order/Resident Service Request for March 8, 2015 again showing that the Tenant refused entry (24/48).

Also introduced was another Notice of Entry dated March 20, 2015 for entry on March 23, 2015. K.S. testified that again the Tenant claimed she did not receive the Notice and denied entry. The Work Order/Resident Service Request introduced in evidence for the March 23, 2015 attempt at treatment showed that the Tenant refused entry to the pest control people.

The Landlord then issued another Notice of Entry on June 2, 2015 for entry on June 11, 2015. Again, the Tenant was not prepared for the treatment. (27/48 and 28/48)

A letter date June 11, 2015 was introduced in evidence which informed the Tenant that her cooperation was required and that should she not cooperate a 1 Month Notice would be issued. K.S. stated that a Notice to End Tenancy for Cause was not issued sooner because the resident manager felt sorry for the Tenant as a single mother. He stated that the Landlord was trying to work with her.

Another report was introduced in evidence dated August 13, 2015 wherein the writer again notes that the Tenant was not prepared for treatment and therefore the unit could not be tested. The Landlord then issued a "Final Warning" to the Tenant by letter dated August 14, 2015 (38/48).

K.S. testified that the Tenant continued to put up barriers and otherwise interfere with the Landlord's attempt to address the infestation.

He stated that eventually the Tenant just vacated the rental unit. Introduced in evidence was a copy of the Tenant's Notice to Vacate dated October 18, 2015 wherein she gave notice to vacate the rental unit as of November 30, 2015. The reasons noted on the Notice were as follows: "Need more rooms. Lease is up and cockroaches".

K.S. stated that the Tenant vacated on November 30, 2015 but left all her belongings and dropped the keys off with the resident manager and said "see you in court". Introduced in evidence by the Landlord were 55 photos of the items left by the Tenant, including bikes which were left in the storage area.

K.S. stated that it took three workers, four hours to move the Tenant's items as well as 8 hours of cleaning. Introduced in evidence as the "Move-out Report" (1/18) and the Move out Condition Inspection Report (12/18) as well as the "Move Out Charge Analysis" (16/18).

The Landlord sought compensation in the amount of \$730.00 including:

transfer of the Tenant's items to storage	\$180.00
Cleaning	\$100.00
9 months of storage at \$50.00 per month	\$450.00
TOTAL CLAIMED	\$730.00

K.S. confirmed that they continue to store the Tenant's items. He also stated that he had the items inspected for cockroaches. Introduced in evidence at 48/48 was a report date July 28, 2016 from C.G. Pest Free Industries Ltd. confirming that the Tenant's belongings were inspected and that no evidence of cockroaches were found.

K.S. confirmed that no food was stored in the storage area.

K.S. stated that after the Tenant moved out the subject unit was treated and is cockroach free. He further stated that the new renters have not reported any issues.

In reply to the Landlord's testimony, the Tenant testified as follows.

She stated that the few times they came in to gel the unit, she was prepared and on some occasions she wasn't. She stated that the method to inform her was by posting the notice to her

door and that she simply did not receive them. She also stated that she assumed "somebody was taking the notice off her door".

The Tenant stated that on some occasions she was not ready but asked the pest control people to come back when she was ready. The Tenant stated that when the pest control people came on November 28, 2014 she was just running out the door and asked them to come back in half an hour. She stated that they refused to come back.

The Tenant further stated that she suggested that they inform her by telephone or directly give her the notice. She stated that she was informed of the building wide treatment in both buildings (A and D, D being the building her unit was in). The Tenant claimed that she was never personally handed a notice of entry.

The Tenant further testified that she had her kitchen cleared and her refrigerator moved on December 17, 2014. She stated that she was not fully prepared but she was "prepared as much as she could" and let them do "something then and there".

The Tenant further testified that on July 14, 2015 she was again not provided proper notice, but she said "I am not prepared, but you can come in and do what you can".

The Tenant stated that she had a lengthy conversation with a female employee of the pest control company about different methods to reduce the cockroaches. She claimed that she was informed that if after 2 months gel is not working, gel is pointless.

The Tenant testified that she was not at the rental unit in August when the pest control people arrived as she was traveling to Manitoba to retrieve her children from their summer holiday and was gone approximately one week.

When I asked the Tenant how it was that the other units got better and hers got worse, she said she had no idea. She stated that she keeps her rental unit clean and she was informed that was what she had to do.

The Tenant confirmed that her lease was set to expire on November 30, 2016. She also confirmed that she gave notice because she needed more rooms, her lease was up and she was tired of dealing with the cockroaches.

When I asked the Tenant why she did not ask to break her lease earlier, she stated that she could not afford to. She claimed that she would have been charged \$75.00 per month for the balance of the lease as well as \$200.00 fee. She stated that she attempted to talk to the building manager, J.D., who refused her request.

The Tenant testified that she left the majority of her items in the rental unit save and except for her clothes which she took to a laundromat to wash prior to moving to her new rental unit.

The Tenant also stated that the photos do not depict the condition she kept her rental unit normally, but only what it looked like when she moved out.

The Tenant stated that she was not prepared to retrieve the items which the Landlord is storing as she is informed that cockroaches can live on paper and as such she does not have the funds to have another company

On her application for Dispute Resolution the Tenant indicated that she sought \$20,000.00 in compensation for the following:

“I had cockroaches over a year (September 2014 – November 2015) I had cockroaches over a year. The manager [J.] and I would discuss and nothing was fixed. I am requesting rent returned and reimbursement for everything I lost. Also the stress of living in unsanitary conditions”.

During the hearing the Tenant stated that the \$20,000.00 could be broken down as follows:

1. \$4,950.00 representing return of one half of the amount of rent she paid.
2. \$5,000.00 for stress associated with dealing with the issues created by the cockroaches.
3. \$8,300.00 for the value of items she abandoned. She stated that she consulted with a popular online buy and sell website to determine the value of those items.

The Tenant confirmed that she did not participate in the move out condition inspection.

The Tenant further confirmed that she did not wish to retrieve her items from storage as she was informed that the cockroaches can get inside electronics and otherwise hide and survive for many years. She further stated that she has replaced the majority of the items.

J.D. also testified on behalf of the Landlord. When I asked J.D. if the Tenant asked to be relieved of her obligations under the fixed term tenancy, J.D. stated that the Tenant did not make such a request.

K.S. confirmed that he was not informed at any time that the Tenant wished to be relieved of her obligations under the fixed term tenancy. K.S. stated that if she had made such a request they would agreed to it “for sure”.

In closing K.S. stated that every time they tried to do the treatments they gave the Tenant ample notice and time to prepare. As she claimed during her testimony that posting to the door was insufficient, he noted that the January 5, 2015 treatment was hand delivered and she was again

not prepared. He confirmed that her unit, and others were treated on that day, and her unit was the only one that was not prepared.

K.S. also stated that the Tenant's claim that cockroaches can live on paper is not true. He stated that adults survive up to a month and the larvae up to two months. He stated that cockroaches will not survive unless they have a source of water. He confirmed that the furniture was stored in an area where there is no water or food. He further stated that the Tenant should have taken these items and that if she cared about these items she should not have left them.

K.S. also noted that, as depicted in photo #52, some of the items left were damaged and not useable.

K.S. also stated that cockroaches live in kitchens and bathrooms.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties bear the burden of proving their claims.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

The evidence before me substantially favours the Landlord's position that the Tenant failed to cooperate with the Landlord's efforts to address the cockroach infestation. I have set out the relevant documents in detail in this my Decision and they clearly show the Landlord's substantial efforts to communicate with the Tenant and facilitate treatment of her unit. I find that the Landlord acted reasonably and responsibly in their attempts to address this infestation. Accordingly, I find that the Landlord complied with their obligations pursuant to section 32 of the *Act* to maintain the rental unit.

Further, I accept the Landlord's evidence that the other rental units saw a decrease in infestation, whereas the Tenant's unit got worse as time progressed. I find, on a balance of probabilities, that it is likely that the Tenant's actions contributed to the infestation in her rental unit. As such, I find that she has failed to prove that her alleged loss resulted from the actions or negligence of the Landlord. Further, I find that the Tenant, in failing to cooperate with the pest control professionals, failed to take steps to mitigate or minimize her loss.

Finally, I note that the Tenant has refused to retrieve her items. I accept the Landlord's testimony that these items have been inspected and show no signs of infestation. The Tenant is therefore able to retrieve her personal possessions and her refusal to do so further supports a finding that she has failed to prove and/or mitigate any alleged losses relating to her personal possessions.

For the same reasons, I find that the Tenant has failed to prove her claim for return of half the rent she paid and her claim for compensation related to alleged stress (which is more properly characterized as compensation for breach of her right to quiet enjoyment.) While the circumstances created by the cockroach infestation was no doubt upsetting and frustrating, I find the Tenant's own actions, and inaction, prolonged the treatment and disruption to her rental unit. As previously noted, I find the Landlord acted responsibly and in a timely fashion. Further, had it not been for the hurdles created by the Tenant's lack of cooperation with the pest control efforts, the infestation would likely have been addressed much faster. For these reasons I dismiss her claim for return of the rent she paid as well as compensation for stress/breach of quiet enjoyment.

In all the circumstances, I find the Tenant has failed to prove her claim and I therefore dismiss the Tenant's claim for compensation in the amount of \$20,000.00.

I will now address the Landlord's claims.

The Tenant conceded that she abandoned her items and failed to clean the rental unit. The photos submitted by the Landlord further confirm the condition of the rental unit.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

37 (2) 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 breached section 37(2) by abandoning her items and failing to clean the rental unit.

I accept the Landlord's testimony and evidence that they incurred the cost of \$180.00 for the transfer of the Tenant's furniture and items to storage. I further accept the Landlord's claim that they paid \$100.00 to have the unit cleaned. I find the Landlord is entitled to compensation for these amounts.

The Landlord sought the sum of \$450.00 for storage of the Tenant's items. This sum was derived from a \$50.00 a month charge from December 2015 to August 2016. The Landlord testified that the Tenant's belongings remain in storage and are available for her retrieval. Accordingly, I find that the Landlord has incurred the total cost of \$600.00 for the 13 months the Landlord has paid to store the items from December 2015 to December 2016. While this is more than the amount initially claimed by the Landlord, it was clearly particularized on the Landlord's Application for Dispute Resolution such that the Tenant ought to have known the cost to store her items would continue to rise. Accordingly, I grant the Landlord the sum of \$650.00 as compensation for their storage costs.

I further Order that the Tenant must retrieve her items by December 31, 2016, failing which the Landlord may dispose of the items in accordance with Part 5 of the *Residential Tenancy Regulation*.

The Landlord, having been substantially successful, is also entitled to recovery of the \$100.00 filing fee.

In total I award the Landlord compensation in the amount of **\$1,030.00** for the following.

Transfer of Tenant's belongings to storage	\$180.00
Cleaning of rental unit	\$100.00
Storage of Tenant's belongings from December 2015 to December 2016	\$650.00
Filing fee	\$100.00
TOTAL	\$1,030.00

The Tenant, in failing to participate in the move out condition inspection, has extinguished her right to claim against her security deposit pursuant to section 36 of the *Residential Tenancy Act*. Pursuant to section 38, I grant the Landlord authority to retain the Tenant's \$450.00 security deposit, towards the \$1,030.00 awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$580.00**. The Landlord must serve the Monetary Order on the Tenant and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Tenant failed to prove her claim and her claim is dismissed.

The Landlord is awarded \$1,030.00 in compensation for the cost to move and store the Tenant's belongings, clean the rental unit and recovery of the filing fee. The Landlord is authorized to retain the Tenant's \$450.00 security deposit and is granted a Monetary Order for the balance due in the amount of **\$580.00**.

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: December 2, 2016

Residential Tenancy Branch