



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The tenant applies for an award of damages and out of pocket compensation resulting from a flea infestation in the rental unit. She also seeks return of her pet damage deposit as she no longer has a pet.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant has suffered a flea infestation and that the landlord is responsible for it? If so, what then is a proper measure of damages? Should the pet damage deposit be returned?

Background and Evidence

The rental unit is the three bedroom upper portion of a house. There is a second rental unit below it, rented to others by the same landlord.

The tenancy started June 1, 2016. The current monthly rent is \$1225.00. The landlord holds a \$625.00 security deposit and a \$400.00 pet damage deposit.

The tenant was on holiday in mid July when her daughter, who was at the rental unit, contacted her on July 15 to report that there were fleas in the home.

The tenant is adamant that though she had a pet cat at that time, the fleas did not come from it.

On July 17, the tenant contacted the landlord who immediately contacted a pest control company. The company fumigated the home for fleas on July 20.

The tenant returned home from her holiday on July 24. She felt that it was unsafe to stay at the rental unit and so moved to a nearby hotel for about seven days.

On July 30 the landlord, with the tenant's knowledge, went in and cleaned the rental unit.

On August 11 the landlord had the pest control people fumigate the rental unit again because the tenant told her the fleas were still there and even increasing in number.

The tenant went to stay at the hotel again; August 11 to August 14.

It appears that the flea problem has now been resolved. The tenancy has continued.

The flea infestation put the tenant to considerable inconvenience. As well, she incurred significant expense staying elsewhere while the rental unit was treated.

It's the tenant's view that the former tenants had a pet cat with fleas and that the fleas lay dormant in their pre-adult stage until mid July.

The former tenants vacated near the end of April 2016. The property sat empty for a month until the tenant moved in. The landlord's figure of 50 days between the previous tenants leaving and the fleas appearing, was not disputed, though my calculation would put it from the end of April to mid July, a period of two and one half months.

The tenant says that the previous tenants did not have the carpet professionally cleaned. She presented an extract from the internet regarding the life of fleas. The extract purports to be from a veterinarian who describes the various stages: egg, larvae, pupae and adult, composing the life of a flea.

The tenant testifies that when she first viewed the premises she sat on the carpet and there was no evidence of fleas. She says that the man, Mr. C.S., from the pest control

company that the landlord hired, told her that the fleas came from the previous tenant's and that it was a "no brainer."

The hearing recessed to permit the tenant to attempt to contact Mr. C.S. so that he could give evidence but unfortunately she was unable to reach him.

The landlord's daughter gave testimony that when the previous tenants were vacating she saw a rug shampoo machine in the rental unit. From this she infers that the carpets were shampooed when the previous tenant's left.

The landlord's neighbour gave testimony that the previous tenants' cat wore a collar and that the colour of the collar changed occasionally. From this she infers that the cat was wearing flea collars that were changed occasionally.

Analysis

Assuming that the landlord was responsible if, unknown to her, the previous tenants left fleas behind when they moved, the evidence does not show on a balance of probabilities that they did leave fleas behind.

The initial burden of proving that she rented accommodation with a flea infestation falls to the person alleging it. That is, the tenant in this case.

I have read the veterinarian opinion. While it may be within the realm of the possible that fleas in a pre-adult stage could exist for 50 days, the veterinarian's opinion appears to say that once a food source is present (that is, a pet or a person or the like), the adult appears from its pupa stage and begins to feed (that is, bite pets and people). In this case there was a period of June 1 to July 17 before fleas were reported and after a host (the cat, the tenant or other occupants) became available.

The tenant's claim regarding the fleas is based on the premise that a pupa would delay transformation to adulthood, despite a food source, for such a lengthy period of time. The tenant would need to provide specific evidence from a qualified person to establish that fact.

She has not done so. In result the tenant has not proved that fleas in any stage of their development were in the home when she moved in.

The tenant no longer has her cat nor any other pet. She wishes to have her \$400.00 pet damage deposit returned. The landlord has taken advice that she is not obliged to return it until the end of the tenancy.

I find I must agree with the landlord. The *Residential Tenancy Act* states that like a security deposit, a landlord must return the deposit money or make a claim against it after the tenancy has ended. In the meantime it serves as security for damage a pet might have caused during the tenancy. That damage is most often discovered or determined at the end of the tenancy.

There is no provision requiring a landlord to return the pet damage deposit during the tenancy.

Indeed, I would assume that since the tenant had a pet cat, the tenancy agreement permits pets. The tenant may acquire another pet. The deposit money may serve as security for loss incurred by damage caused by that pet.

Conclusion

The tenant's application is dismissed.

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 01, 2017

Residential Tenancy Branch