



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRINCESS MANOR HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant provided testimony that the landlord was served with the notice of hearing package and the original documentary evidence package via Canada Post Registered Mail on March 9, 2017. The tenant stated that she has not provided any proof of service. The landlord's agent (the landlord) called into the hearing at 22 minutes past the start of the scheduled hearing time. The landlord indicated that she did read the entire contents of the hearing package, but that she was expecting the Residential Tenancy Branch to call her. At this time the landlord clarified that she did receive the tenant's notice of hearing package the submitted documentary evidence. The landlord confirmed that no documentary evidence was submitted by the landlord. The tenant's application was clarified with the landlord who indicated that she understood. A summary of the tenant's application was provided at the outset of the hearing to the landlord and the landlord was provided an opportunity to respond, present evidence and make submissions. No issues were raised by either party regarding the notice of hearing package or the submission of evidence.

I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation, return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2017 on a fixed term ending on August 31, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$595.00 payable on the 1st day of each month. A security deposit of \$285.00 was paid on January 13, 2017.

The tenant seeks a monetary claim of \$1,202.20 which consists of:

\$9.59	Plastic bags & cleaning supplies
\$2.81	Plastic bags & cleaning supplies
\$12.30	Bed Bug Spray
\$297.50	Return of Rent (March 1 – 15 th), loss of use
\$575.00	Return of Rent (February 1 – 28 th), loss of use
\$285.00	Return of Original Security Deposit

The tenant provided affirmed testimony that after moving into the rental unit the tenant discovered that she was suffering from bug bites which were later determined by her Doctor as being Bed Bug Bites. The tenant seeks recovery of costs incurred due to the bedbug infestation and for return of rent paid for the tenancy until she had vacated the rental premises on March 15, 2017 as the tenant loss the use of the rental on February 8, 2017 due to the landlord's inaction.

The tenant provided a copy of a letter dated February 8, 2017 in which the landlord was notified via a letter from a local advocacy group which states in part,

Suite #2 has bed bugs and the tenant needs accommodations provided to her because she can not stay there awhile it is so infested. Please fumigate her suite. J. must have a walk-through done to her suite to checklist any damages

and conditions of the suite may have before she moved in. [Reproduced as written]

The tenant also submitted a copy of a letter dated February 14, 2017 in which her Doctor states in part,

Ms. W. suffered from multiple acute bites on her face, extremities and torso that I saw on 08-02-17 and in my opinion these were consistent with acute bedbug bites. She has seen me for over the past six years including visits this past December, January and February and she had no history of any sort of skin symptoms suggesting she had ever had this problem in the past. I have advised her to vacate her present living quarters immediately.[Reproduced as written]

The tenant has submitted photographs on a disc detailing bite marks which she claims are due to bed bug bites.

The tenant removed her personal property after purchasing plastic bags, cleaning supplies and a bed bug spray. The tenant stated that the landlord failed to investigate and deal with the bed bug issue and as a result the tenant had to temporarily vacate the rental unit on February 8, 2017.

The tenant has provided copies of the invoices/receipts for the purchase of plastic bags, cleaning supplies and the Bed Bug Spray.

The landlord disputes the tenant's claims stating that there is no proof of bed bugs as the landlord did investigate the tenant's claims. The landlord submitted that she was only shown one bite, but was unable to determine if it was due to a bed bug. The landlord confirmed that because of this no further action was taken by the landlord. During the hearing the landlord confirmed that she had received the tenant's notice to vacate the rental premises on February 16, 2017. The landlord confirmed that she received the tenant's forwarding address in writing in a letter on March 1, 2017. The landlord confirmed that she still holds the tenant's \$285.00 security deposit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. I find that the tenant has provided sufficient evidence to satisfy me that there was a presence of bed bugs and that the landlord failed to act reasonably by investigating and responding to the complaint. The landlord in responding to this claim relies solely on direct testimony. On the tenant's side, the tenant has provided:

- photographs depicting bug bites
- proof of notification to the landlord, re: bedbugs
- series of email correspondence between tenant and landlord, re: bedbugs
- copies of receipts; cleaning supplies
- letter from tenant's doctor, diagnosing bug bites on February 8, 2017

On this basis, I grant the tenant a monetary claim of \$1,202.20 as claimed.

However, Section 38 of the Residential Tenancy Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, the tenancy ended on March 15, 2017 and that the landlord received the tenant's forwarding address in writing on March 1, 2017. As of the date of this hearing the landlord has not returned the security deposit nor has she filed an application in dispute of returning it. As such, I award the tenant a monetary claim of \$285.00 pursuant to section 38 (6) as the landlord has failed to comply with section 38 (1) of the Act which is an amount equal to the security deposit.

The tenant has established a total monetary claim of \$1,487.20.

The tenant is not entitled to recovery of the filing fee as the tenant had received a waiver for the filing fee which was not paid.

Conclusion

The tenant is granted monetary order for \$1,487.20.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and 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: July 17, 2017

Residential Tenancy Branch