



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application for:

- a Monetary Order pursuant to section 67 of the *Act*.

Both the landlord and tenant attended the hearing by way of a conference call. The landlord was assisted at the hearing his advocate, P.L. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Following opening remarks, the tenant said she would like to amend her application for dispute to reflect a lower award of \$3,403.05. As the landlord would not be prejudiced by this amendment, I change the tenant's application pursuant to section 64(3)(c) to reflect this new, lower amount.

Preliminary Issue – Service of Notice of Hearing and T's Evidence

Following opening submissions, the landlord and his advocate asked that the tenant's application for a monetary award be dismissed without leave to reapply because of her alleged failure to serve the landlord in accordance with the *Act*. The landlord's advocate stated his client had received no evidence, no application for dispute and had only become aware of the hearing because of an automatically generated email provided to him by the *Residential Tenancy Branch*. Furthermore, the landlord's advocate explained that even if he had received the tenant's application for dispute and evidentiary package, he had no way to serve the tenant with any evidence in response because no forwarding address had ever been provided to the landlord.

On October 22, 2018 an interim decision written by an Arbitrator with the *Residential Tenancy Branch* found the tenant had failed to serve the landlord with her evidentiary package in accordance with the *Act*. The matter was adjourned by the Arbitrator and the applicant was ordered to serve the landlord no later than October 29, 2018 in a manner prescribed by the *Act*.

On October 24, 2018 an Arbitrator with the *Residential Tenancy Branch* approved the tenant's application for substituted service of her evidentiary package. The tenant was found to be authorized to serve her evidentiary package to the landlord by email to the address provided in her application.

After having reviewed the October 24, 2018 decision of the Arbitrator regarding the tenant's application for substituted service and the evidence supplied by the tenant, I find pursuant to section 71(1) & (2) that the landlord was served in accordance with the *Act* on October 29, 2018 by way of email. Section 71 states as follows, "The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order...the director may make any of the following orders...that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies and that a document not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of this *Act*." Furthermore, I dismiss the argument of the landlord's advocate that no return address for service was provided to the landlord, making it impossible for him to respond accordingly. A review of an email sent to the landlord from the tenant on October 29, 2018 contained the tenant's forwarding address. In addition, the landlord confirmed during our hearing of December 3, 2018 that the email address used by the tenant for service was correct. For these reasons, I deem the landlord served with the tenant's application for dispute and evidentiary package by way of email on October 29, 2018.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Background and Evidence

The tenant explained this tenancy began on March 15, 2018 and ended on April 30, 2018. Rent was \$1,350.00 per month and a security deposit of \$675.00 paid at the outset of the tenancy was surrendered by the tenant following the conclusion of the tenancy.

The tenant is seeking monetary award of \$3,403.05 for loss which she purportedly suffered during the tenancy because of the presence of bed bugs in the rental unit. The tenant described finding a significant number of bed bugs in the premises “within a couple of days” of move-in. The tenant said the bugs “were everywhere” and she stated she immediately informed the landlord of her discovery. The tenant acknowledged the landlord was proactive in addressing the issue and arranged for an exterminator to attend the premises. The tenant said the exterminator visited the property “a few times” and noted she had been advised by the exterminator to throw items away and was warned that the bed bugs may return. The tenant described several items that needed replacement because of the bed bug infestation. Furthermore, she said other costs were incurred because of increased hydro usage after being instructed by the exterminator to dry her items on ‘high heat’ and after having stayed in a hotel with her family for an evening during the extermination process.

The tenant sought compensation as follows:

ITEM	AMOUNT
King mattress	\$783.99
Twin mattress	207.19
Crib mattress	72.77
King bedframe	250.00
Kids bunk bed	500.00
Twin mattress	156.77
Twin mattress protectors	89.53
King sized mattress protector	112.00
Twin Bedding	67.17
Pillow Protectors	24.57
Pillows	7.77
Crib sheets	12.29
Couch	500.00
Increased hydro bill	300.00
Hotel room	319.00
TOTAL =	\$3,403.05

The landlord and his advocate said it was difficult to respond to the tenant’s application because they had received no evidence and were unable to speak specifically to the

individual portions of the tenant's application. The landlord provided some submissions wherein he questioned the necessity of the tenant's stay in a hotel and disputed that any responsibility should be placed on him after significant steps were taken to ensure the bed bug infestation was adequately addressed. The landlord said the home was ready for the tenant's return by 9:15 P.M. following extermination and argued that prior to the tenant's occupation of the rental unit, no issues of bed bugs had been reported by any previous tenants. Furthermore, the landlord said he had himself, personally stored items in the home, and never would have done so, if he had knowledge of a bed bug infestation. The landlord's advocate also questioned the landlord's responsibility as it related to the loss incurred by the tenant. The landlord's advocate explained the home had been sold and new owners took possession on April 17, 2018. The tenancy ended on approximately April 30, 2018, therefore in the opinion of the landlord's advocate, the landlord's responsibilities as they related to the tenancy ceased on the date of sale.

Analysis

The tenant is seeking a monetary award of \$3,403.05 because of loss suffered under the tenancy. Following the tenant's submissions, the landlord's advocate questioned the landlord's standing in the matter, arguing the tenancy ended on April 17, 2018 when the landlord sold the property. The tenant remained in the property until approximately April 30, 2018, and the landlord's advocate argued any loss under the tenancy should therefore be placed on the new owner. I will begin by analyzing this aspect of the dispute and then turn my attention to the specifics of the tenant's application.

Residential Tenancy Rule of Procedure 6.6 states as follows, "the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed...the onus to prove their case is on the person making the claim. In most circumstances this is the person making the application."

After a review of the tenant's evidentiary package, and having considered her oral testimony, I find the landlord is correctly identified as the respondent in the application for dispute. I find on a balance of probabilities as described above, that the harm for which the tenant seeks compensation occurred while the named landlord was in ownership of the property. The tenant described discovering a bed bug infestation "within a couple of days" of having moved into the property, furthermore, a review of the receipts submitted as part of her evidentiary package show the items she purchased to replace those damaged by the infestation were bought in March 2018, when the

landlord was still the registered owner. For these reasons, I find the tenant has appropriately named the landlord in her application.

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, the onus is on the tenant to prove her claim for a monetary award.

Both parties confirmed during the hearing that bed bugs affected the premises during the tenancy. The tenant said this presence led her to replace numerous items in the rental unit and caused her to move from the property very early in her tenancy. I find it indisputable that some loss was incurred as a result of the presence of these pests; however, it must be determined whether the landlord bears any responsibility for the replacement of items in the suite.

As noted above, compensation will be granted when it can be proven that damage and loss has stemmed directly from a violation of the agreement or a contravention of the *Act*. Section 32 of the *Act* states, "A 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, makes it suitable for occupation by a tenant." I find that while the landlord made reasonable efforts to ensure that an exterminator attended the property when he was first informed of the presence of bed bugs, the landlord failed to maintain the property as described above and the tenant suffered loss as a result.

A review of the tenant's evidentiary package revealed numerous receipts for the costs associated with replacing damaged items and I accept her testimony that a night's hotel stay was required following the extermination work. In addition, I find it reasonable for her to conclude that she experienced an increase in hydro costs following instructions by the exterminator to dry all of her clothes on 'high heat' in an effort to kill the bed bugs and required replacement of her couch. While the landlord and his advocate argued that a hotel stay was unnecessary and they questioned the associated cost of the hotel, I find this argument to be without merit as the tenant was only permitted to return home at

9:15 P.M. following the extermination and the tenant required a hotel that could accommodate her and her children. For these reasons, I find these costs reasonable.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$3,403.05 which includes the entire amount sought in her application. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: December 4, 2018

Residential Tenancy Branch