



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant YM" did not attend this hearing, which lasted approximately 81 minutes. The two landlords (collectively "landlords"), the landlord's lawyer and the two tenants, tenant KM and tenant SM ("tenants"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed that their lawyer had permission to speak on their behalf at this hearing. The two tenants confirmed that they had permission to speak on behalf of their son, tenant YM, at this hearing.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' written evidence package.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a return of double the amount of their security deposit?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and ended on June 30, 2018. Monthly rent in the amount of \$1,350.00 was payable on the first day of each month. A security deposit of \$675.00 was paid by the tenants and \$500.00 from the deposit was returned to the tenants by the landlords on July 12, 2018. A written tenancy agreement was signed by both parties. The tenants provided a forwarding address in writing to the landlords on June 30, 2018, by way of letter handed to the landlords personally on June 30, 2018, during the move-out condition inspection. The landlords did not have any written permission to keep any part of the tenants' deposit. The landlords did not file an application for dispute resolution to keep any part of the tenants' deposit.

The tenants seek a monetary order of \$20,265.70 plus the \$100.00 application filing fee. They provided a summary, monetary order worksheet and another statement detailing the breakdown of their claims. They also provided invoices, receipts, estimates, letters, and medical records. The tenants seek double the security deposit of \$675.00, totalling \$1,350.00, despite the fact that \$500.00 was returned to them by the landlords. They seek a loss of quiet enjoyment of \$800.00 per month for six months, totalling \$4,800.00. They seek \$8,000.00 for pain and suffering, which includes \$975.00 for their son being "kicked out of daycare," and \$6,015.70 for other monetary costs.

The tenants testified that they are seeking the above monetary order from the landlords because there were bed bugs inside their rental unit that the landlords failed to deal with properly. They claimed that all of their fish died, they were itchy and had bites all over, and their son had to change his clothes when he got to daycare, eventually having to

leave because of the bed bugs. They stated that the landlords have to learn a lesson from the tenants' suffering.

The tenants said that they started experiencing bites in Christmas of 2017 and notified the landlords but no pest control was done until March 29, 2018. The tenants claimed that the landlords sprayed their own unit, knew about the bed bugs before, and failed to do pest control treatment for the entire building. They stated that they had to pay for a bed bug detection dog in order to find bed bugs in their rental unit. They explained that the landlords refused to pay for this dog or do pest control until much later. They claimed that the landlords provided pest control records for previous treatments in the building but the company would not disclose which units were treated because it was confidential. They explained that when they had their own pest control done, they were told that unless the whole building and all units were treated, they could not get rid of the bed bug problem in the rental unit. The tenants maintained that they did all of the preparation for the treatment of their unit for pest control and when the landlords finally did have the treatments done in their unit, the products used were not safe and caused them diarrhea and other medical problems.

The landlords dispute the tenants' claims. The landlords provided a written evidence package including invoices for pest control, photographs, emails, statements and receipts. The landlords claimed that they were diligent in addressing the tenants' complaints, as they started pest control in March 2018, when the tenants first reported their son having bed bug bites. They said that the tenants told them that their doctor indicated the tenants' son had flea bites and they went to check for fleas inside the unit but there were none.

The landlords claimed that the tenants caught a bed bug, brought it to them, and the landlords called a pest control company that came in the next day on March 29, 2018. They explained that the same pest control company came in two weeks later on April 13, 2018, did another treatment and did not charge anything for this visit. The landlords stated that the pest control company came again on Mar 4, 2018, then the tenants' bed bug detection dog came in on May 18, 2018, and another pest control follow up was done on May 23, 2018. The landlords said that there were no complaints from the tenants after the last treatment, the pest control company did not find any live bed bugs, and treatments were only done because the tenants complained, not because anything was found. The landlords provided a letter, dated August 23, 2018, from the pest control company, documenting the above dates and visits.

The landlords claimed that they asked the tenants' neighbours in the surrounding units if they wanted pest control treatments and they all refused so none were done. The

landlords provided a laundromat receipt stating that they paid for the tenants' clothes to be cleaned, due to the pest control issue.

The landlords stated that the tenants were not entitled to the return of double the amount of their security deposit. They claimed that not filing an application to keep the deposit was an error on the part of their building manager. They explained that they withheld \$175.00 from the tenants' original security deposit of \$675.00 in order to pay for cleaning to the oven which they said the tenants left dirty, to replace a broken light fixture, and clean the windows, drapes and blinds. The tenants disputed this, stating that they sufficiently cleaned the rental unit prior to vacating and that the landlords did not identify any issues during the move-out condition inspection.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application for \$19,415.70, without leave to reapply.

The tenants are not entitled to recover their costs of \$39.19 for a USB drive and \$30.00 for a doctor's note for this hearing. The only hearing-related fees that are recoverable under section 72 of the *Act* are for filing fees.

I find that the tenants failed to show that the landlords did not adequately deal with the pest control issues at the rental property. In accordance with section 32 of the *Act*, I find that the landlords dealt with the tenant's pest control issues in a timely and reasonable manner, given that the tenants did not know the source of the bites initially.

The landlords immediately called pest control when the tenants informed them that they had bed bugs in their unit. The landlords provided pest control records to show the dates, treatments, and findings made. The landlords paid for the tenants' laundry, as well as for pest control, as per their obligations. Therefore, I find that the tenants' claims for replacing their furniture, staying in an Airbnb for one night, moving and dump fees, pain and suffering, stress, daycare fees, and a loss of quiet enjoyment are not recoverable from the landlords.

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remain unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties at this hearing. The tenancy ended on June 30, 2018. The tenants provided a written forwarding address to the landlords personally on June 30, 2018. The landlords acknowledged receipt of this forwarding address. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlords did not return the full deposit to the tenants or file an application for dispute resolution to claim against the deposit.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$675.00, totalling \$1,350.00, minus the portion returned to them of \$500.00, for a balance owing of \$850.00.

As the tenants were mainly unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$850.00 against the landlords. The tenants are provided with a monetary order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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.

The remainder of the tenants' application is dismissed without leave to reapply.

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 17, 2018

Residential Tenancy Branch