



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. The landlord attended with her agent VS and agent/witness BB ("the landlord"). The tenant attended.

Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. I find the landlord served the tenant in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal and admissible aspects of this matter and my findings are set out below.

The parties agreed the tenancy began on June 1, 2013 and is ongoing. The unit is a two-bedroom apartment in an apartment building. Rent is \$725.00 payable on the first of the month. At the beginning of the tenancy, the tenant submitted a security deposit of \$362.50 which the landlord holds. The tenant has not provided authorization to the landlord to retain any part of the security deposit.

The landlord submitted a copy of the tenancy agreement signed by the parties.

The landlord claimed reimbursement from the tenant for the following:

ITEM	AMOUNT
Pest control invoice dated September 11, 2017	838.95
Plumbing invoice dated June 14, 2018	\$166.54
Bailiff fees	\$80.00
Total	\$1,085.49

I summarize the key parts of the admissible evidence under each heading.

Pest Control

The parties agreed that the landlord incurred an expense of \$838.95 for pest control to eradicate bedbugs in the unit in September 2017. The landlord submitted a copy of an invoice dated September 11, 2017.

The landlord claimed the tenant is responsible for the infestation of bedbugs and should therefore reimburse the landlord. The landlord submitted a copy of a letter from the pest

control company dated April 2, 2018 which stated in part as follows [as written, underlining added for emphasis]:

This is to certify that we did initial pest inspection of suite [unit] with building manager on September 4, 2017 & reported suite with very heavily infested with bedbugs in both bedrooms and in living room. The suite reported with extreme clutter and poor sanitation. We found the stuff/garbage/recycle on the floor. [...] We did inspected the adjoining suite as well and reported no bedbugs in surroundings suites. We concluded that tenant of [unit] may have brought bedbugs from somewhere.

The landlord called BB to provide affirmed testimony. BB testified he was the building manager. He stated that there were no bedbugs in the apartment building before September 2017.

The witness BB could provide no personal testimony regarding the condition of the unit to support the finding of the pest control company that the unit had “extreme clutter and poor sanitation”. The witness BB acknowledged that during the tenancy there had been no inspections of the unit prior to September 2017 and that the unit met all compliance standards in quarterly inspections afterwards.

Based only on the above opinion, BB testified he believed the tenant is solely responsible for bringing the bedbugs into the unit and providing a dirty, cluttered environment in which they proliferated.

The tenant acknowledged her unit had bedbugs requiring pest eradication in September 2017. However, she denied she is responsible for the bedbug infestation or the cost of eradication. She stated the source of the bedbugs was neighboring units and provided numbers of similarly infected units. She denied the description of the condition of her unit in the pest control company’s letter referred to earlier. She stated she promptly discarded all furniture and items in which the bedbugs could live and there had been no bedbugs since September 2017.

Plumbing

On June 14, 2018 the tenant complained about a blocked toilet. The landlord called a plumber who dislodged a blockage consisting mostly of plastic dental floss picks. The landlord submitted an invoice in the amount of \$166.54 from the plumber on which he

wrote a description of the blockage as “exceptionally bad”. He also stated the toilet was not the problem as it was a reliable model with a good maintenance reputation.

The landlord claimed that the tenant is responsible for the obstruction to the toilet and plumbing costs incurred. She claims reimbursement in the above amount.

The tenant denied that she or her family had put anything in the toilet that could account for the obstruction; they did not use dental floss picks. She testified that the toilet is a low water volume toilet and they add water regularly to keep it unblocked. She claims the toilet caused the blockage, not the tenant or her family. The tenant stated she had complained to the property manager BB about the slow toilet; BB denied receiving any such complaints from the tenant.

Bailiff fees

The landlord claimed reimbursement of bailiff’s fees of \$80.00 incurred to serve the Notice of Hearing and evidence package as the tenant “was hard to serve”.

The tenant stated she has been a resident of the unit for six years; she lived there with her adult son and grandchild. She stated she is at home most of the time caring for the child. She testified the landlord could have personally served her or her son or sent her the documents by registered mail. The tenant denied any obligation to reimburse the landlord.

Analysis

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

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and

4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

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. Rule 6.6 of the *Rules of Procedure* states in part as follows:

6.6 The standard of proof and onus of proof

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.

I discuss each of the landlord's claims in turn.

Pest Control

Section 32 of the *Act* sets out that a landlord must ensure that the rental property is suitable for occupation and compliant with health, safety and housing standards required by law. As well, *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* states as follows (in part):

The landlord is generally responsible for major projects, such as ... insect control.

The only evidence of the landlord in support of her claim that the tenant is responsible for the cost of the pest control is contained in the letter from the pest control company; that is, the tenant “**may** have brought the bedbugs from somewhere” and the unit was cluttered and dirty (emphasis added).

Considering sections 67 and 32 of the *Act* as well as the evidence of the parties, I find the landlord has not met the burden of proof on a balance of probabilities that the tenant has violated any term of the agreement, *Act* or regulations. I therefore find the tenant is not responsible to reimburse the landlord for the cost of the pest control.

I find that the landlord has not met the burden of proof that the tenant is accountable for the introduction of bedbugs to the unit, that she failed to report the infestation in a timely manner, that she perpetuated the infestation by any means, or that she failed to cooperate with pest control. Instead, I find the tenant cooperated with the pest control

effort ensuring it was successful by discarding furniture and objects in which the bedbugs may live; I find that she met all criteria in the inspections after September 2017 to present.

I therefore dismiss the landlord's claim with respect to reimbursement of the costs of pest control without leave to reapply.

Plumbing

I find the landlord has met the burden of proof with respect to her claim for reimbursement of the cost of the plumbing repair in the amount of \$166.54.

I accept the tenant's evidence that the toilet was new at the beginning of the tenancy and the tenant and her family are the only people who use the toilet. I accept the opinion on the plumber's invoice submitted as evidence that the tenant caused the blockage but putting items into the toilet. I find the tenant and her family caused the blockage. I do not accept the tenant's evidence as reasonable that there is something wrong with the toilet and accept the plumber's statement on the invoice that the toilet was a reliable, high quality model.

I therefore grant the landlord a monetary award in the amount of \$166.54 for reimbursement of the plumbing fees.

Bailiff Fees

I find the landlord has not met the burden of proof with respect to her claim for reimbursement of the cost of the bailiff fees in the amount of \$80.00.

The landlord did not submit a copy of the invoice. In any event, I find section 89 provides a variety of methods allowing the landlord to serve the tenant which do not involve incurring bailiff fees. There is no evidence that the landlord attempted to mitigate her costs in this regard and serve the tenant by other, less expensive methods. The landlord has not met the burden of proof on a balance of probabilities that this cost was reasonable and unavoidable with some practical effort.

I therefore dismiss this aspect of the landlord's claim without leave to reapply.

Filing Fees

As the landlord has been partially successful in her claim, I grant a monetary award in the amount of \$25.00 for reimbursement of filing fees pursuant to section 72.

Summary

In summary, I grant the landlord a monetary order of **\$191.54** calculated as follows:

ITEM	AMOUNT
Plumbing invoice dated June 14, 2018	\$166.54
Partial reimbursement of filing fee	\$25.00
Total	\$191.54

Conclusion

The landlord is entitled to a monetary order in the amount of **\$191.54**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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: March 28, 2019

Residential Tenancy Branch