



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

This hearing was reconvened from the original hearing commenced and adjourned on February 26, 2019 in response to an application made November 1, 2018 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

There was some discussion by the Tenant’s Advocate about a medical issue of the Tenant and a consequent reluctance of the Tenant to provide oral evidence at the hearing. Although offered an opportunity to seek an adjournment, it was confirmed that no adjournment was being sought for health, medical or any other purposes.

The Landlord asked why the other landlord named on the tenancy agreement was not named as a Respondent and was not served with the Materials. It was explained to the Landlord that a tenant is only required to serve the respondents named in an application. Although the Tenant’s Advocate indicated that they would be happy to seek an amendment to the Tenant’s application to add the other landlord, the Landlord declined the addition of the other landlord. As a result no adjournment was found to be

necessary for the addition of another respondent. The Parties confirmed that there were no other preliminary issues.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on February 1, 2018 for a fixed term to end August 31, 2018. Rent of \$1,400.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit and \$700.00 as a pet deposit. The Parties conducted a walkthrough of the unit at the start of the tenancy however no inspection report was completed by the Landlord with a copy of that report provided to the Tenant. The Tenant provided its forwarding address to the Landlord no later than the first part of April 2018. The Landlord has not returned the security and pet deposit and has not made an application claiming against the security deposit.

The Tenant claims return of double the combined security and pet deposit.

The Tenant states that she no longer personally stayed in the unit after March 6, 2018, that her belongings were moved out on March 23, 2018 and that the keys and her forwarding address were sent to the Landlord by registered mail on March 26, 2018.

The Tenant states that she noticed fleas in the unit on February 8, 2018 and immediately informed the Landlord. The Tenant states that a pest control company treated the unit in the last week of February 2018 and that the Tenant moved her belongings into the unit the following day. The Tenant states that fleas were still present and that the Tenant again informed the Landlord. It is noted that the Parties

both provided copies of the same pest control invoice indicating the treatment date of February 23, 2018. The Tenant states that the Landlord informed her that the flea treatment would not be effective until 2 to 3 weeks after the treatment, that there was a 90 day guarantee and that the company would be called back to the unit. The Tenant states that she then informed the Landlord that if it was going to take that amount of time the tenancy would have to end. The Tenant states that she then moved out. The Tenant states that the Landlord also failed to inform the Tenant that there was follow-up required such as vacuuming the carpet every day. The Tenant states that her dog had been bitten several times by the fleas. The Tenant states that had she known the treatment would take that amount of time the Tenant would not have moved her belongings into the unit.

The Tenant provides a photo of a dish/plate that the Tenant states was taken March 6, 2018. The Tenant states that the fleas depicted on the plate were picked off her dog and some were from her bedding. The Tenant provides an undated Witness letter from a friend and I note that this letter states as follows: "After moving much of her F&E into the apartment, I was told by (the Tenant) that there were fleas in the apartment. I assumed she was just seeing a few, but upon my next visit I was shown there were many." The Tenant also provided a letter from her occupational therapist and I note that this person indicates that the therapist was told of the presence of fleas by the Tenant and reviewed the pictures of the fleas on March 6, 2018.

The Tenant states that her therapist could not provide treatments to the Tenant in her unit due to the fleas. The Tenant also states that the fleas were dormant at the time. The Tenant states that her dog is treated monthly for fleas and also had an emergency treatment in early March 2018. The Tenant states that the previous tenants had a cat and that the Landlord has a dog. The Tenant argues that the Landlord failed to act soon enough and failed to eradicate the fleas.

The Tenant states that there was also significant noise in the unit. The Tenant states that at the outset of the tenancy the Landlord was informed of her need for a quiet unit with sound insulation and was told that the unit was quiet. The Tenant states that despite these assurances she was able to hear normal conversations from the Landlord who lived in the upper part of the unit and that the Landlord's dog barked incessantly. The Tenant states that she had to leave the unit to avoid overhearing conversations and arguments between the Landlord and his partner. The Tenant states that she cannot recall if the Landlord was informed of the noise issues prior to an email that was sent to the Landlord on March 3, 2018.

The Tenant states she no longer wanted the tenancy to continue due to the fleas and noise, and that the Landlord was informed of this. The Tenant claims losses in relation to rents paid, emotional suffering, alternate accommodation costs, personal property cleaning costs and kennel costs.

The Landlord states that there were no fleas in the unit at all and that despite this fact had a pest control company treat both the unit and the upper unit for fleas. The Landlord provides a copy of the pest control company noting that no flea activity was found on the day of treatment. The Landlord states that his own dog is treated every three months for fleas and has never had any problems. The Landlord states that the previous tenants never informed him of any fleas being in the unit. The Landlord states that the tenants who moved into the unit subsequently for the period May 2018 to January 2019 confirmed that there were no fleas in the unit. The Landlord provides an email from the subsequent tenants. The Landlord states that the other landlord, his partner at the time, was informed of the presence of fleas and that as soon as it was reported to the Landlord he called the pest control company and made the appointment for as soon as possible. The Landlord states that the pest company tested the bedroom, living room and kitchen of the Tenant's unit and found nothing. The Landlord states that the company also inspected their upper unit and found nothing. The

Landlord states that out of an abundance of caution they still paid for treatment to both the upper and lower unit.

The Landlord states that the Tenant informed them that there was no rush in moving into the unit before the end of February 2018 as the Tenant had another unit still being rented for that month. The Landlord states that the Tenant never stayed in the unit much from the start of the tenancy. The Landlord states that the Tenant never showed the Landlord any fleas. The Landlord states that when the Tenant informed the Landlord that she wanted to end the tenancy the Landlord was agreeable to ending the tenancy for the end of April 2018. The Landlord states that he had no idea that the Tenant even moved out of the unit until April 2018 when the Landlord served the Tenant a 10 day notice for unpaid rent. The Landlord states that after the treatment the Landlord informed the Tenant that she only had to sweep regularly and that daily vacuuming was not necessary.

The Landlord states that the unit had sound proofing insulation and resin bars. The Landlord states that the Tenant was made aware that there were children residing with the Landlord in the upper unit. The Landlord states that when the Tenant did send an email on March 3, 2018 about the noise the Tenant was told to inform the other landlord who was at home during the day. The Landlord states that the children were in bed by 7:00 p.m. each night. The Landlord states that he does not believe that there was noise and never had any complaints from any other tenants.

The Tenant states that due to the fleas she was not able to obtain regular cleaners for her move out cleaning due to health and safety and that as a result she had to hire trauma scene cleaners to clean all her belongings and the unit. The Tenant states that the cleaner provided a letter dated April 12, 2018 indicating that there was clear evidence of fleas prior to the pest control and that also refers to the noise. The Tenant claims cleaning costs of \$1,100.00, return of the rent paid for February and March 2018 less the 10 days the Tenant spent in the unit in the amount of \$2,140.00, pain and

suffering in the amount of \$1,000.00, the cost of boarding her dog for the period Mar 15 to 30, 2018 in the amount of \$834.00 and the cost of alternate accommodation in the amount of \$487.50. The Tenant states that she incurred the accommodation costs in living with a friend for this period. The Tenant provides a letter from this friend in relation to accommodation claim. The Tenant states that she paid this amount by e-transfer. The Tenant did not provide any banking records or email records of the e-transfer.

The Landlord argues that the Tenant should not be entitled to any return of rent as the Tenant never stayed at the unit. The Landlord argues that the Tenant did not provide any supporting evidence that a regular cleaner could not do the move-out cleaning due to health and safety concerns and highly doubts that this is the case. The Landlord states that the Tenant's dog was not even at the unit and was only seen on a couple of occasions. The Landlord argues that the Tenant never ended the tenancy, never responded to the offers of the Landlord to mutually end the tenancy and should not be entitled to alternate accommodation costs.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address and on the undisputed evidence that the Landlord neither returned the security deposits or made an application for dispute resolution claiming against the security deposits, I find that the Landlord is now required to pay the Tenant double the combined security and pet deposit plus zero interest of **\$2,800.00**.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 37(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Landlord provides objective and direct evidence from the pest control company of the unit not having fleas. There is no evidence that the Landlord was ever shown any fleas in the unit. There is no direct and objective supporting evidence of anyone observing fleas in the unit. I note that the Tenant's friend does not indicate when or how fleas were shown to the Tenant and the friend was not available at the hearing to clarify this evidence. Although the Tenant provides a photo of apparently dead fleas on a plate and evidence that these fleas were removed from her dog the Tenant did not provide any supporting evidence of her dog not having fleas prior to the onset of the tenancy. The Tenant's evidence that her dog was being bitten by fleas from the unit appears inconsistent with the Tenant's evidence that the dog was being treated monthly for fleas. For these reasons I find that the Tenant has not provided sufficient evidence to show on a balance of probabilities that the unit had fleas that were present prior to the start of the tenancy or were caused by either the act or negligence of the Landlord.

Section 28(b) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming damage or loss must prove, inter alia, that a loss has occurred and that reasonable steps were taken by the claiming party to minimize the loss or costs claimed. The Tenant gives evidence of noise being reported to the Landlord on March 3, 2018. If the Tenant experienced disturbing noise prior to this date the Tenant has not provided evidence of informing the Landlord and therefore evidence of acting to mitigate any loss of enjoyment arising from

noise prior to that date. The Tenant's evidence is that she no longer stayed in the unit after March 6, 2018. The Landlord gave undisputed evidence that when he was notified of the noise problem he informed the Tenant to notify the other landlord who was in the upper unit all day. There is no evidence that the Tenant spoke with the other landlord after March 3, 2018 and therefore no evidence of any further reasonable steps being taken by the Tenant to minimize any loss before no longer staying at the unit. I find therefore that the Tenant has not provided sufficient evidence to substantiate on a balance of probabilities that the Landlord by act or negligence caused the Tenant to suffer any loss of quiet enjoyment.

Given the above findings, I dismiss the Tenant's claims for costs or losses in relation to fleas or noise. As the Tenant has been successful with its claim for return of the security deposits I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,900.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,900.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 10, 2019

Residential Tenancy Branch