



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

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

- Application for a return of all or a portion of the tenant's security pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of the tenant's security pursuant to section 38?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started in October of 2015. The monthly rent started at \$1,450.00 per month and it later increased to \$1,538.00. The tenant paid a security deposit of \$725.00.

The tenant testified that there were frequent ant infestations in the rental unit which eventually caused her to end the tenancy. The tenant testified that she notified the landlords of the ant infestation but they did not provide effective pest control. The tenant provided multiple videos showing large amounts of ants in the rental unit.

The landlords testified that the tenant informed them of ants in January 2018 and February 2018 and they testified that they took appropriate pest control measures. The landlords testified that they consulted with an exterminator and the rental unit was treated in January 2018. The landlords testified that they also sent a handyman to treat the rental unit again in February 2018. The landlord testified that the tenant did not complain about ants again until the tenant ended the tenancy.

The tenant vacated the rental unit on March 31, 2019. The tenant was at the rental unit for the condition inspection on move-out at March 31, 2019 but she left before the condition inspection report was completed. The landlords testified that the tenant was asked leave because she was being very belligerent. The landlords testified that they completed the move-out condition inspection report with the tenant's son.

The landlord produced a copy of the condition inspection report with signatures for the landlord and tenant on March 31, 2019. The signature for the tenant stated that it was signed as agent for the tenant. The landlords testified that they witnessed the tenant's son sign the condition inspection report on March 31, 2019. The tenant acknowledged that the signature looked like her son's signature. However, she testified that she did not authorize her son to act as her agent.

The condition inspection report stated in writing that the tenant agreed to a deduction of \$525.00 from the security deposit. The landlord testified that the deduction was for utilities and cleaning.

The parties agreed that the landlord provided the tenant with a partial refund of the security deposit in the amount of \$212.00.

The tenant claimed a monetary order of \$1,026.00 for double the balance of her security deposit.

The tenant also claimed a monetary order of \$5,826.25 for damages for having to move because of the ant infestation. The tenant testified that this claim was based on \$866.25

in moving expenses and a claim for the difference in rent from the rent in the tenancy agreement to her new rent of \$2,300.00 for a six month time period.

The tenant also requested reimbursement of the filing fee.

Analysis

The tenant has requested compensation for having to move because of the ant infestation, a return of her security deposit and reimbursement of the filing fee. I will address each claim separately.

i. Ant infestation

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 claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of 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. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. 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.

In this matter, I am satisfied that the rental unit did have a substantial ant infestation. However, I find that the tenant has failed provide sufficient evidence to establish that this damage or loss resulted directly from a violation by the landlord of the *Act*, regulations or tenancy agreement.

I find that the tenant has failed to provide sufficient evidence to establish that the landlord did not take reasonable measures to address the ant infestation. I find that the

landlord had the rental unit treated for ants and the tenant did not make further complaints about the ends until near the end of the tenancy. I find that the tenant has not provided sufficient evidence to establish that this conduct was not sufficient.

According, I dismiss the tenant's application for damages in regards to the ant infestation.

ii. Security deposit

Section 38(4)(a) states that a landlord may retain a security deposit if the tenant agrees in writing. In this matter, I find that the tenant did agree in writing to the deduction of \$525.00 from the security deposit.

The tenant argued that her son did not have authority to act as her agent. However, even if the tenant has not granted actual authority to her son to act as her agent, the tenant's son may have ostensible authority to act on her behalf. This arises when a third party reasonably believes that the principal has authorized the agent to perform the act in question on his or her behalf.

I find that the tenant's son did have ostensible authority to act on the tenant's behalf in this matter. I find that the tenant abandoned the move-out condition inspection and she entrusted her son to complete it on her behalf. I find that this conduct lead the landlords to reasonably believe that the tenant had authorized her son to complete the move-out condition inspection report on her behalf. As such I find that the tenant authorized the landlords in writing to retain the sum of \$525.00 from the security deposit through her son, acting as her ostensible agent.

Since the tenant has authorized the retention of \$525.00 from the security deposit, I find that the tenant is not entitled to a return of her security deposit.

iii. Filing fees

Since the tenant has not prevailed in this matter, I dismiss the tenant's application for reimbursement of the filing fee pursuant to section 71(1) of the Act.

Conclusion

The tenant's application is dismissed.

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: September 15, 2019

Residential Tenancy Branch