



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$7,453.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, two witnesses for the tenant JM and JM (both of which who did not testify), the landlord, a second named landlord LC (who was removed from the application as they are not listed on the tenancy agreement, which will be addressed below), and a landlord advocate IT (advocate) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below.

The hearing began on November 21, 2019 and after 60 minutes, the hearing was adjourned to allow the parties additional time to present their evidence. An Interim Decision dated November 25, 2019 was issued, which should be read in conjunction with this decision. On January 20, 2020, the hearing continued and after an additional 53 minutes of evidence, the hearing concluded.

Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed the tenant vacated the rental unit since filing their application on October 10, 2019. As a result, I find the tenant's request for an order directing the landlord to comply with the Act, regulation or tenancy

agreement to now be moot. Therefore, I dismiss that portion of the tenant's application, without leave to reapply as the tenancy has already ended. Given the above, I will consider only the tenant's monetary claim and the tenant's request for the recovery of the cost of the filing fee at this proceeding.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Is the tenant entitled to money owed for compensation for damage or loss under the Act?
- Is the tenant entitled to the return of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 3, 2019 and the tenancy was scheduled to revert to a month to month tenancy after August 3, 2020. The parties disputed the end of tenancy date. The tenant stated that they vacated on October 26, 2019. The landlord testified that the tenant vacated on November 1, 2019.

The parties agreed that during the tenancy, the monthly rent was \$1,600.00 per month. The landlord stated that they original requested and accepted a security deposit in the amount of \$1,600.00; however, after the claim was filed by the tenant, the landlord returned \$800.00 of the tenant's security deposit. The tenant confirmed that since filing their application and vacating the rental unit, the landlord has also returned and additional \$680.50 and that the remaining \$119.50, the tenant provided written permission for the landlord to keep the portion on November 9, 2019.

The tenant's monetary claim of \$7,453.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Uniqlo – clothing	\$44.69
2. Ardene – clothing	\$16.80
3. H&M – clothing	\$55.98
4. Ardene (2) – clothing	\$25.01

5. Old Navy – clothing	\$27.39
6. 1 st rent and deposit	\$3,200.00
7. Mattress & box spring	\$883.67
8. 2 nd and 3 rd rent	\$3,200.00
TOTAL	\$7,453.00

Regarding items 1 through 5, inclusive, the tenant has applied for compensation for clothing that the tenant claims was damaged by bed bugs. The tenant blames the landlord for renting the tenant a rental unit with bed bugs in it. The landlord denies that the rental unit had bed bugs before the tenant moved into the rental unit and that bed bugs were only discovered after the tenant had been residing in the rental unit for almost two months.

In support of items 1 through 5, inclusive, the tenant provided receipts from the stores in which the tenant stated they had to purchase replacement clothing from. The tenant did not provide testimony that they attempted place their clothing in the dryer for 40 minutes or in the alternative the freezer in keeping with the instructions from the pest control company, which was raised by the landlord and will be discussed further below. The landlord submits that they were first notified of bed bugs by the tenant on September 25, 2019, which is almost 2 months of the start of the tenancy without any related issues.

The landlord stated that photos of suspected bed bugs were provided on September 27, and on September 30, 2019, Abell Pest Control (first pest control company) was on September 30, 2019 and no bed bugs were found. The inspection results from the first pest control company were provided in writing in evidence and is dated September 30, 2019. The inspection report indicates that the rental unit was “INSPECTED FOR BEDBUG ACTIVITY. BED/MATTRESS & BASEBOARD PERIMETER INSPECTED. NO BEDBUGS ACTIVITY NOTED DURING INSPECTION.”

The landlord testified that on October 12, 2019, PROSPEC (second pest control company) was contracted and due to bed bugs being found, the rental unit was treated. The tenant vacated the rental unit just two weeks later. The October 12, 2019 report indicates “Note: Less than 10 adult bugs found no young or eggs found. Recent & minor infestation. It was caught early.”

The tenant testified that although they had tenant's insurance, they were told verbally by their insurance agent that they could not submit a claim if it related to bed bugs. The tenant admitted that no documentary evidence was submitted from their insurance company to confirm the verbal conversation the tenant described with the insurance agent. The tenant did not have an insurance policy number to provide and confirmed that they did not ask for anything in writing to support their testimony in preparation for the hearing. The tenant also confirmed there were no photos submitted of any clothing with bed bugs for my consideration. The tenant submitted a doctor's note dated September 26, 2019, which indicates that she was seen for bed bug bites. The tenant also submitted colour photos of what the tenant describes were the reaction on their skin from bed bug bites. The photos are not dated; however, the tenant stated that the

The landlord referred to a document from the second pest control company dated November 5, 2019, which reads in part:

In my consultation, I advised the tenants and her parents that if we do find any bugs, it is highly recommended that they get bedbug encasements for the mattress and box spring afterwards, and to put all clothing and bags through the dryer, and anything that cannot go through the dryer at full heat 40 minutes should thus go in chest freezer for a couple weeks, as a precaution...

I assured the owners and tenants and parents that this indeed was a very recent and very minor infestation, and that there is no need to discard of any furniture, bed, or clothing and I repeated my advice to get the encasements and to put all the clothes and bags and shoes through the dryer or the freezer as a precaution. They all agreed.

Regarding item 6, the tenant confirmed that the amount of \$3,200.00 would be deducted by \$1,600.00 during the hearing as the parties confirmed that the landlord has already returned the tenant's full \$1,600.00 security deposit, which reflects the \$119.50 deduction the tenant confirmed authorizing the landlord to deduct from the security deposit. The tenant gave the landlord permission to retain in writing as of November 9, 2019 for the deduction of \$119.50 which was since the application was first filed on October 10, 2019. For the remaining \$1,600.00 portion of item 6, the tenant is seeking the return of the equivalent of one month of rent. The tenant did not state the reason on the Monetary Order Worksheet and instead wrote "1st rent & deposit", totaling \$3,200.00. During the hearing, the tenant testified that the first month of rent was being requested due to having to vacate the rental unit due to bed bugs.

Regarding item 7, the tenant is seeking \$883.67 for the replacement of their mattress and box spring, which the tenant claims was damaged as a result of bed bugs and that the landlords did not provide a rental unit free of bed bugs. The landlord denies that there were bed bugs in the rental unit at the start of the tenancy. The landlord referred to the tenant's timeline, which supports that it was not until almost 2 months into the tenancy before the tenant reported an issue with bed bugs in the rental unit.

Regarding item 8, the tenant stated that they are seeking 100% of their rent back as they never felt like the rental unit was theirs due to 11 entries by the landlord or the agent of the landlord. During the hearing the tenant admitted that 9 of the 11 entries by the tenant were consented to by the tenant. The landlord testified that the 10th alleged entry was not an entry at all, and was a telephone request for entry, which the tenant did not dispute during the hearing. For the 11th entry, the landlord admitted that their agent SJ did make an error and entered the rental unit when the tenant was not present to address a repair a water leak repair on a wall. The tenant stated that she contacted the police to report a break and enter but did not have the police file number to present in evidence during the hearing. The landlord stated that they doubt a burglar would break into a rental unit to repair/patch a wall and referred to an Affidavit from landlord agent SJ submitted in evidence, which supports that on September 17, 2019, there was miscommunication between the agent and the owner regarding the painting of a wall that was repaired previously and still required painting.

Regarding the tenant's termination of the tenancy, the tenant confirmed that on September 30, 2019, when the termination letter was written, that that was the first time the tenant wrote to the landlord to advise they were vacating the rental unit. There is no dispute that at no time prior did the tenant write to the landlord to advise of a timeframe in which the landlord had to address the bed bugs before the tenant would be forced to vacate the rental unit. The landlord stated that the termination letter dated September 30, 2019, was received by the landlord on October 12, 2019 and that was a surprise to them.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Items 1 to 5 – The tenant has requested compensation for five items of clothing, which the tenant stated had to be discarded due to bed bugs. The tenant did not testify that they attempted to freeze or dry the items in accordance with the instructions from the second pest control company. Furthermore, the landlord is not the tenant's insurer during a tenancy and I find the tenant failed to provide sufficient documentary evidence to support that a claim for her clothing was being denied by their insurance provider. Finally, given the timeframe set out by the tenant, I am not satisfied that the rental unit had bed bugs in the unit at the time when the tenant moved into the rental unit. I have carefully considered the reports from the pest control companies, the second company of which indicated that the infestation was caught early and was minor. I find it more likely than not that the tenant introduced bed bugs into the rental unit given that it was two months into the tenancy before bed bugs were raised as an issue to the landlord.

Based on the above, I find the tenant has failed to meet parts one, two and four of the four-part test for damages or loss. As a result, I dismiss items 1 through 5 inclusive, without leave to reapply, due to insufficient evidence.

Item 6 – As indicated above, this portion was reduced to \$1,600.00 from \$3,200.00 during the hearing as noted above. For the remaining \$1,600.00 portion of item 6, the tenant is seeking the return of the equivalent of one month of rent. Even though the tenant did not state the reason on the Monetary Order Worksheet and instead wrote “1st rent & deposit”, totaling \$3,200.00, during the hearing, the tenant testified that the first month of rent was being requested due to having to vacate the rental unit due to bed bugs. Given the above, and in keeping with my finding regarding items 1 to 5 above, I find the tenant has failed to provide sufficient evidence that bed bugs were in the rental unit at the start of the tenancy, and as a result, I find the tenant is not entitled to the return of their first month’s rent. Consequently, this portion of the tenant’s claim is dismissed due to insufficient evidence, without leave to reapply.

Item 7 - The tenant is seeking \$883.67 for the replacement of their mattress and box spring, which the tenant claims was damaged as a result of bed bugs and that the landlords did not provide a rental unit free of bed bugs. Consistent with my findings regarding items 1 to 6 inclusive above, I dismiss this item for the same reason. The tenant has failed to meet parts one, two and four of the test for damages or loss. Therefore, I dismiss this item without leave to reapply, due to insufficient evidence.

Item 8 – The tenant is seeking 100% of their rent back for September and October 2019 in the amount of \$3,200.00 as they never felt like the rental unit was theirs due to 11 entries by the landlord or the agent of the landlord. As the tenant confirmed that 9 of the 11 entries were consented to by the tenant, I find the tenant provided consent for the landlord to enter and that by doing so, the landlord has not violated the Act. In other words, the tenant had the option to deny entry and made the decision not to and as a result, I find the tenant has failed to meet all four parts of the test for damages or loss as a result. For the 10th entry, I find it was not an entry at all, and that based on the undisputed testimony of the landlord who testified that it was a verbal request, that a verbal request does not equate to an unauthorized entry.

As there is no dispute that the 11th entry was unauthorized, **I caution** the landlord not to enter the rental unit or permit an agent to entry a rental unit without complying with section 29 of the Act. I do not find that the tenant has provided sufficient evidence; however, regarding the \$3,200.00 amount claimed for this portion and as a result, I dismiss this portion of the tenant’s claim without leave to reapply, due to insufficient evidence. In addition, I find the amount claimed to be unreasonable as it would equal the return of 100% of two months of rent, which I find fails to comply with parts three and four of the four-part test for damages or loss.

As the tenant's claim has failed, I do not grant the filing fee.

Conclusion

The tenant's claim is dismissed without leave to reapply, due to insufficient evidence.

The filing fee is not granted as a result.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 5, 2020

Residential Tenancy Branch