



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Apartments R Us
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCDT, MNSD, FFT

Introduction

This hearing was convened in response to an application by the Tenants 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 the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord’s Witness gave evidence under oath. The Landlord confirms that the email address as set out in the Tenants’ application is correct. The Parties confirmed receipt of the each other’s evidence.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on September 1, 2018 and ended January 6, 2020. Rent of \$1,495.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$747.50 as a security deposit. The Tenants provided their forwarding address to the Landlord by

registered mail and by email on January 6, 2020. The Landlord received this forwarding address. The Landlord made no application to claim against the security deposit and has not returned the security deposit.

The Landlord states that it was present for the move-in inspection for about 45 minutes after which the Landlord left the unit and left the inspection report for the Tenants to complete. The Tenants states that the Landlord did not inspect any part of the unit with them and left the inspection report with the Landlord's signature in place. The Landlord states that at the move-out inspection the Tenants had a representative attend in their place. The Landlord states that after completion of the inspection the representative "signed off" on the deficiencies and agreed to deductions from the security deposit. The Landlord states that the representative did not sign where the agreement is set out for signature as there was no room to set out the costs for the deficiencies, so the representative signed the back page of the report setting out the deficiencies. The Tenants state that neither they nor their agent signed any agreement for the Landlord to retain the security deposit. The Tenants provide an email dated January 12, 2020 from their agent in relation to the move-out inspection and its signature.

The Landlord's Witness HV states that while it was present for the move-out inspection it is hard to recall any details. The Witness states that he heard the Landlord ask the Tenant's representative to review the documents and to sign the report but that no other details are recalled.

The Tenants states that mold was present at the onset of the tenancy and that during the tenancy mold continued to appear but was cleaned by the Tenants. The Tenants state that by December 18, 2019 they made the connection between their health problems during the tenancy and the mold that had become very bad. The Tenants state that the mold was on all the windows and sills and on the sliding door as well as on some walls and, on several occasions, the couch. The Tenants state that the Landlord was informed of the mold on December 18, 2019 along with their notice to end

tenancy and that the Landlord told the Tenants that since they were leaving this mold was none of their concern. The Tenants state that the Landlord never inspected the unit for mold after their report. The Tenants claim compensation in the form of a return of the full rent paid for January of \$1,495 plus a late fee of \$25.00 for their labour in cleaning the mold during the tenancy. The Landlord states that it did not inspect the unit for mold as the Tenants were moving out of the unit.

The Tenants states that the unit was provided with a mattress and that on move-in day the mattress was found covered with bedbugs. The Tenants state that they requested that the mattress be replaced. The Tenants provide a copy of the move-in report that notes this mattress is to be replaced. The Tenants state that the Landlord failed to act until 50 days after the tenancy started and as a result the Tenants slept on the floor for this period. The Tenants claim \$2,491.50. The Landlord denies that bedbugs were present on the mattress. The Landlord states that pest control was brought in during October 2018 and that the Landlord is "quite sure" that the bugs were not bedbugs. The Landlord states that leaving the Tenants without the mattress was not a problem as the Tenants made lots of invalid complaints and complaints that seemed overboard. The Landlord states that the Tenants never informed that Landlord that they were sleeping on the floor because of the mattress.

The Tenants state that within the second week after moving into the unit, rodents were reported to the Landlord as being in the unit. The Tenants state that the Landlord sent a pest control company to remedy the problems after which there was no issue until May 7, 2019 when the rodents again appeared. The Tenants state that the Landlord was informed on the same day of the rodents and the Tenants request for pest repairs. The Tenants provide a copy of the email reporting the rodents. The Tenants state that the Landlord never responded despite continued requests from the Tenants over the next week. The Tenants state that they then gave up. The Tenants claim compensation of \$1,445.00. The Landlord states that it imagines that it called pest

control right away. The Landlord states that the Tenants have not provided any supporting evidence of rodents being present.

Analysis

Section 32(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.

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. It is undisputed that the Landlord was not informed of mold in the unit until December 18, 2019. As the Landlord was not given this information the Landlord had no opportunity to remedy any mold problem. For this reason, I find that the Tenants have not substantiated that the Landlord failed to maintain the unit during the tenancy to December 18, 2019. While there may have been mold in the unit after it was reported on this date, and I note that Tenant's photo evidence of extreme moisture on the windows that tends to support at a minimum a growth opportunity for mold, the only evidence is that the Landlord failed to inspect the unit after it was reported. There is no medical evidence to support that mold was present and affecting the Tenant's health however upon the report of mold the Landlord had the obligation to inspect the unit. Given the undisputed evidence that the Landlord failed to inspect the unit and considering that the Tenants acted to mitigate health problems by moving out of the unit, I find that the Tenants have substantiated a nominal amount of **\$100.00** for the Landlord's failure to inspect the unit.

Given the undisputed evidence that the Tenants were provided with a mattress at the onset of the tenancy, that this mattress was noted on the move-in report to be replaced and that the replacement did not occur for 50 days I find that the Tenants have substantiated a loss for the period without a mattress. There is no evidence that as a

result of the bugs originally found on the mattress the unit became infested with bedbugs. As the Tenants otherwise had full use of the unit, I consider that the Tenants are only entitled to a nominal amount of \$10.00 per day for each day that they were without the mattress for a total of **\$500.00**.

As the Landlord acted in relation to the first report of rodents, I find that the Tenants have not substantiated that the Landlord failed to act in relation to the rodents at that time. Although it is undisputed that the Landlord did not inspect the unit for rodents after the second report in May 2019, the Tenants have only provided evidence within the email to the Landlord that noises were heard in the walls of the unit. There is no evidence of rodents being in the unit. For this reason, I find on a balance of probabilities that the Tenants have not substantiated that the Landlord failed to maintain the unit free of rodents. I dismiss the claim for rodents.

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. Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. The move-out report contains an area where a tenant can clearly provide written agreement for a landlord to retain a clear amount of the security deposit. Given that this area is not signed by the Tenants or the Tenants' agent, as this area is written over in different ink and appears to be made at a different time than at move-out, as the Tenants' agent signed only "a list of deficiencies to deduct from deposit" without any clear agreement for the Landlord to retain any amount of the security deposit, and given the Tenants' Witness evidence of the January 12, 2020 email, I find on a balance of probabilities that the Tenants did not provide written authority for a deduction of any amount from the

security deposit. Given the undisputed evidence that the Landlord received the Tenants' forwarding address and did not return the security deposit or make an application claiming against the security deposit I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$1,495.00**.

As the Tenants' application has met with some success, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,195.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$2,195.00**. 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: July 2, 2020

Residential Tenancy Branch