



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On September 22, 2020, the Tenants made an Application for Dispute Resolution seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

This Application was originally set down for a hearing on January 12, 2021 at 1:30 PM. Tenant S.W. attended the hearing, with O.D. attending as her advocate. Both Landlords attended the hearing as well. This hearing was subsequently adjourned for reasons set forth in the Interim Decision dated January 12, 2021. This Application was then set down for a reconvened hearing on April 12, 2021 at 11:00 AM.

Tenant S.W. attended the reconvened hearing, with O.D. attending as her advocate. Both Landlords attended the reconvened hearing as well. At the outset of both hearings, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of O.D., provided a solemn affirmation.

During the original hearing, O.D. advised that the Tenants would like to withdraw their claim for a return of the security deposit. As such, this Decision will address the Tenants' Application with respect to monetary compensation for loss.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 17, 2017 and ended when the Tenants gave up vacant possession of the rental unit on April 5, 2020. Rent was established at an amount of \$1,040.00 per month and it was due on the first day of each month. A security deposit of \$500.00 was also paid.

O.D. advised that the Tenants are seeking compensation in the amount of **\$3,999.20** for the cost of replacing a bed and associated items due to an ongoing ant infestation. She submitted that the Tenants advised the Landlords of this issue in March 2019 and she referenced emails, pictures, videos, and receipts submitted as documentary evidence to support the Tenants' position. Moreover, she cited Section 32 of the *Act* and Policy Guideline # 1 to demonstrate that this was an issue that the Landlords were responsible for addressing.

Tenant S.W. advised that when she first moved in, she had limited furnishings, so she purchased a brand-new bed and the accompanying pillows and shams mostly in 2018. She stated that she advised the Landlords of the ant infestation in March 2019 and had frequent communication about this issue with the Landlords. The Landlords immediately took action and contacted the strata. The strata then coordinated pest control; however,

she was not sure when this commenced. She stated that the whole building was being fumigated on account of this infestation, but she then stated that only ant bait was laid down to treat the infestation. She testified that it could not be determined where the infestation originated but neighbours had informed her that the rental unit always had issues.

She stated that she complied with the instructions given to her by the pest control company and by notices provided by the strata. She was informed that the ants were attracted to crumbs or grease, but there was none of this in the bathrooms or bedrooms. As well, the grease spots depicted in the documentary evidence were permanent stains that she could not remove. The treatments of the infestation were unsuccessful for over a year. She is seeking this compensation as she disposed of these items at the end of the tenancy because ants had been found in them during her tenancy.

Landlord T.G. advised that they spoke with a pest control company and were informed that the ants are attracted to protein. However, he submitted that the Tenant did not necessarily always keep the rental unit in a clean, sanitary manner, and he referenced documentary evidence to support this claim. He stated that the treatment for this infestation was to bait the ants so that the colonies would be eliminated. He stated that there were never any ant issues before or after this tenancy.

The Tenant advised that they were seeking compensation in the amount of **\$175.00** for the cost of replacing food items that they disposed of because of the ant infestation. She stated that at least a dozen grocery bags of items were disposed of and she listed off the approximate price of some of these items. She submitted that she clipped open bags of food to prevent ants from getting in them, but this did not correct the problem. Despite knowing this, she did not make any attempts to store her food in another manner so as not to attract the ants.

O.D. referenced a video submitted as evidence to demonstrate that ants were crawling around the rental unit.

O.D. then advised that the Tenants' final claim was in the amount of **\$480.00** because the Landlords issued a rent increase. However, she then confirmed that this claim was actually for the amount of compensation that the Tenant was seeking for having to live through this ant infestation issue for a year. She cited an email that was submitted as documentary evidence to demonstrate that the Tenants asked the Landlords for a rent reduction during the tenancy because of this infestation.

The Landlords confirmed that they increased the rent; however, they did so in accordance with the *Act*. In response to the Tenants' email requesting a rent reduction, they stated that there was not much they could do about the infestation issue as the strata was managing the treatment. They just followed the strata's direction.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* outlines the Landlords' requirement to provide a rental unit that meets housing, health, and safety standards required by law.

Section 67 of the *Act* permits compensation to be awarded if damage or loss results from a party not complying with this *Act*.

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As well, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that there was an ant infestation in the rental unit and that this particular species of ant is attracted to food and water. While the Tenant claimed that the ants were in the rental unit from the start of the tenancy, I do not find there to be any evidence to support this.

Moreover, I do not find that the Tenant has provided sufficient evidence to demonstrate the origin of the ant infestation. While it appears as if other units in the building had also been treated for the presence of the ants, the Tenant has not submitted compelling or persuasive evidence that this infestation came from another unit, or if it developed in her

rental unit and then spread to other areas of the building. As the burden of proof rests with the Tenant to substantiate her claims, I do not find there to be satisfactory evidence to establish that this problem did in fact originate in another part of the building and had subsequently spread to her rental unit.

As there is insufficient evidence to demonstrate where the fault lies regarding this ant infestation, I am not satisfied that the Tenants have sufficiently supported their claims for compensation. As a result, I dismiss these claims in their entirety.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

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: May 5, 2021

Residential Tenancy Branch