



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to the tenant's application seeking double the security deposit, a monetary order for compensation for damage or loss and recovery of the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the Orders sought?

Background and Evidence

The tenant testified that he paid a security deposit of \$500.00 on April 15, 2006. On May 22, 2010 the tenant says he supplied his forwarding address to the landlord. The tenant says the security deposit was returned to him 3 days after the 15 days required in the Residential Tenancy Act. Further the tenant says the landlord did not include any interest on the deposit.

The landlord agrees that he received the tenant's forwarding address and says he returned the deposit via mail and it may have arrived 3 days after the 15 day period but the landlord says he has no control over when Canada Post would deliver the deposit. The landlord made no submissions with respect to the lack of interest on the deposit.

With respect to the rest of the tenant's claims the tenant says that the landlord renovated the basement of the home to add a suite and tenants moved into the suite in 2009. In August of 2009 the tenant says he discovered that his rental unit upstairs was infested with bed bugs. The tenant says the landlord had the rental unit sprayed 4 or 5 times over the course of the next few months, however, in January 2010 they discovered that the bedbugs had not been eradicated and they reported the matter to the landlord again. At this point the tenant says the landlord refused to undertake any more treatments. Eventually the tenant gave his notice and vacated the rental unit.

The tenant testified that some of their furniture had to be thrown away entirely as it was infested with bedbugs. The tenant seeks \$1,870.00 for the loss of the furniture and \$1,350.00 for loss of quiet enjoyment. The tenant says he arrived at \$1,350.00 for loss of quiet enjoyment by calculating 15% of the rent paid for the tenancy over the course of the infestation.

The landlord testified that as soon as he was informed of the bedbug problem he hired a pest control firm to treat the premises. The pest control exterminator, TR, appeared at the hearing and gave evidence under oath. TR testified that he treated the rental unit 6 or 7 times. TR says he did not meet with the tenant but did meet with his wife. TR says he supplied the tenant's wife with instructions on how to prepare the rental unit for treatment but she did not complete all of the preparations required. Further, TR says the tenant's wife asked if certain items, which would normally have to be thrown out, could be treated as they were expensive to replace. Case in point was the baby crib. TR says the crib's pockets had 500-600 bedbugs in them however the tenant's wife did not wish to throw the crib out and asked that it be treated. TR says he tried to treat the crib but the infestation was too severe. TR testified that despite the instructions to prepare the rental unit it was filled with 50-60 garbage bags, piles of toys and a dog and cats. TR testified that the house "...a hoarding house..." and it was impossible to eradicate the bedbugs with so much stuff in the house. TR says he advised the tenants that their house needed to be free of debris for the spraying to be successful however it was never cleared out. TR says he sprayed around the debris but the bugs housed in the debris simply returned. Both TR and the landlord testified that they rarely saw the tenant at the house and always dealt with the tenant's wife. The landlord submitted that he felt it was very hard for the wife to prepare the rental unit as it should have been prepared because she seemed to always be on her own while also trying to look after 4 babies. The landlord testified that since these tenants vacated the bed bugs have been eradicated. The landlord says the tenants living on the main floor have daughters aged 6, 5 and 3 and they have never had a problem with bedbugs.

The tenant cross examined TR and asked if TR had instructed them to put all of their clothing into bags. TR said this was true, clothing was to be washed in very hot water and dried in a very hot dryer and bagged. However, TR testified that the garbage bags he found in the home were not bags of cleaned clothing but bags of other debris.

The tenant asked TR if he advised them that the pets would be okay in the rental unit. TR testified that the spray he was using would not harm the pets however the pets should be removed as they too carried bedbugs. TR says it was impossible to eradicate the bedbugs with all of the debris in the home and the pets.

Analysis

With respect to the claim for double the security deposit, the tenant says he did not receive his deposit until 3 days after the 15 day time limit. The landlord says he mailed the deposit within sufficient time for it to arrive within the 15 day time limit and cannot be held responsible for when Canada Post delivered the deposit. I agree, however the landlord has supplied insufficient evidence to show when he mailed the deposit and the evidence is that the landlord did not return any interest payable with the deposit. For these reasons I find that the tenant is entitled to double the \$500.00 deposit for a total of \$1,000.00, plus interest of \$16.98 payable on the original deposit only less the \$500.00 already paid. I will issue a monetary award in favour of the tenant in the sum of \$516.98.

With respect to the claim for damage and loss of quiet enjoyment, the undisputed evidence is that the tenants moved in to the rental unit in 2006 and in 2009 discovered a bed bug infestation. The landlord undertook between 5-7 treatments over a 4 month period, however, in month 5 the bedbugs had still not been eradicated. The landlord and his witness say that this is because the tenants were unable or unwilling to properly prepare the rental unit and clear it of all the debris that was also likely housing the bedbugs. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here.

As the tenant has only been partially successful in their claim I make no award respecting recovery of the filing fee.

Conclusion

The tenant is provided with a monetary award in the sum of \$516.68. The landlord must pay this sum forthwith. The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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*.
