Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNSD, MNR, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act"). The Tenant applied for:

1. A Monetary Order for compensation - Section 67;

2. An Order for the return of the security deposit – Section 38.

The Landlord applied on June 21, 2011 for:

1. An Order to retain the security deposit – Section 38;

2. A Monetary Order for unpaid rent or utilities - Section 67;

3. A Monetary Order for damages to the unit – Section 67;

4. A Monetary Order for compensation – Section 67; and

5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on December 1, 2013 for a fixed term ending May 31, 2014. Rent of $1,250.00 was payable monthly. At the outset of the tenancy the Landlord collected $625.00.

The Tenant states that within a few days of the start of the tenancy he was bitten by bedbugs that were present in the unit. The Tenant states that he only spent 2 nights in the unit and moved out on December 15, 2014, returning the keys on December 17, 2014.   The Tenant states that he informed the Landlord of the presence of the bugs and arranged to meet the Landlord to discuss the matter but that the Landlord did not attend the meeting. The Tenant argues that the unit was not acceptable and that the end of the tenancy was caused by the failure of the Landlord to provide a habitable unit. The Tenant claims return of the rent paid for December 2013 of $1,250.00. The Tenant provided photos of the bites which he described as numerous.

The Landlord acknowledges that bedbugs were found in the unit but states that only a couple were found at the door of the bedroom and that the Tenant did not have to move out of the unit as bedbugs are not harmful and could be eradicated. The Landlord states that the Tenant did not attend the scheduled meeting on time.

The Landlord states that the Tenant ended the fixed term lease and claim liquidated damages as contained in the tenancy agreement for $300.00. It is noted that the relevant portion of the tenancy agreement states "To terminate the lease . . . the tenant is required to $300.00 as liquidated damages to cover administration costs – this is not a penalty."

The Landlord states that the unit was advertised immediately and was rented again for February 1, 2014 at the same rental rate. The Landlord states that the Tenant caused the Landlord to lose rental income by moving out of the unit with no notice and claims lost rental income for January 2014 of $1,250.00.

The Tenant does not dispute the Landlord's claim for cleaning costs of $40.00.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Despite the Landlord's description of bed bugs being harmless, given the photos of the bites on the Tenant, I give the Landlord's evidence on this point little weight. Given the undisputed evidence that bedbugs were in the unit, I find that the Landlord failed to provide suitable and habitable housing. As a result, I find that the Tenant is entitled to return of the **$1,250.00** as claimed. It is noted that although the Tenant paid a filing fee, there was no indication in the application that this amount was being claimed and it has therefore not been considered.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the presence of the bedbugs, I find that the Tenant did not end a viable tenancy and further that by moving out the Tenant acted to mitigate his own losses. As the tenant did not end the tenancy by any act or negligence, I find that the Landlord is not entitled to either the liquidated damages or the lost rental income claimed. Given the agreement of the Tenant to the cleaning costs claimed by the Landlord, I find that the Landlord has substantiated an entitlement to **$40.00**. Given the minimal success of its application I decline to award recovery of the filing fee to the Landlord. Deducting the

Landlord's entitlement of **$40.00** from the security deposit of **$625.00** plus zero interest leaves **$585.00**. I order the Landlord to return this amount plus the above entitlement of $**1,250.00** to the Tenant forthwith.

Conclusion

I Order the Landlord to retain $40.00 from the security deposit plus interest of $625.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **$1,835.00**. 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 *Residential Tenancy Act*.

Dated: April 16, 2014

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Residential Tenancy Branch