



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and for the return of her security deposit.

Both the landlord and tenant attended the teleconference hearing and gave evidence.

Issue(s) to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the tenant entitled to the return of her security deposit?

Background and Evidence

The tenant seeks the following compensation:

1. Costs associated with bedbugs, as described below
2. Costs associated with participating in the hearing (photocopying and having photos developed)
3. Double her security deposit, which was not returned
4. A retroactive rent reduction for the landlord's failure to take action on bedbugs and mold

The landlord had not received the tenant's evidence package at the time of the hearing. The following table indicates the contents of the tenant's evidence package and how I dealt with each item. Accordingly, I found the landlord was not prejudiced by not having the tenant's evidence package at the time of the hearing and I did not need to adjourn the hearing to give the landlord more time. I note that one of the reasons the landlord

did not receive the tenant's evidence prior to the hearing is because the landlord has refused to provide any mailing address other than the rental unit address.

Tenant's Monetary Order Worksheet (8 claims)	Read aloud to the landlord so that he could copy it down. Asked for his submissions on each claim.
Various emails between the parties	Allowed into evidence, since the landlord was a party to the emails.
Receipt for bedbug heat treatment dated April 30, 2014	I confirmed the existence of an apparently valid receipt to landlord.
Receipt for truck rental for bedbug heat treatment dated April 30/May 1, 2014.	I confirmed the existence of an apparently valid receipt to landlord.
Receipt for mattress covers dated December 3, 2013	I confirmed the existence of an apparently valid receipt to landlord.
Letter from previous tenant "DC" and copy of her tenancy agreement	Not considered as evidence. Instead, I asked the tenant to provide a detailed narrative of events. The previous tenant's letter did not add anything sufficiently relevant to warrant adjourning the hearing so that the landlord could receive a copy.
Letter from tenant's previous roommate "SL"	Not considered as evidence. Instead, I asked the tenant to provide a detailed narrative of events. The previous roommate's letter did not add anything sufficiently relevant to warrant adjourning the hearing so that the landlord could receive a copy.
One month Notice to tenant dated April 3, 2014.	The notice was issued by the landlord.
37 photographs (text messages between the parties and photos of the suite at move-out)	Text messages were considered in evidence because the landlord was a party to these communications. The photos of the suite at move-out are not relevant for reasons below.

The tenant provided evidence that she moved into shared accommodation with another tenant in September 2012. The tenant says that bedbugs were identified in the rental unit the following year and the landlord failed to take appropriate action. As a result, she incurred costs associated with dealing with the problem.

The rental unit is on the lower floor of a house; another tenant occupies the rental unit above. The tenant provided the following timeline regarding the bedbug problem.

On September 7, 2013, the tenant's roommate notified the landlord she saw two bedbugs in the basement. Landlord promptly arranged for an inspection and there was no sign of any live bedbug. Accordingly, no bedbug treatment was initiated.

On December 3, 2013, the tenant told the landlord she found 2 bedbugs. The landlord asked for a photo but the tenant had already disposed of the bugs. On that day, the tenant did a "home treatment" using insecticide from a hardware store, and also purchased mattress covers to protect her bed and prevent spread of any bugs from the mattress. She also washed and dried all her clothing.

On about December 16, 2013, the tenant notified the landlord she found another bedbug and texted him a photo. She says the landlord initially denied responsibility for the problem. However, the next day the landlord met with the tenants to discuss the problem. The tenant agreed to try one more "home treatment" of insecticide. She says the landlord told her that if there were any more bugs, he would arrange for another professional bedbug inspection.

The tenant sent the landlord another text message on January 9, 2014 to advise she found another bedbug. The text message states in part "I sprayed my room again today and found another bedbug. As we discussed a couple days ago this will be the last spray I do and if I see anymore bedbugs i will call you to have the exterminator come in."

The tenant gave evidence that she was not home much between January 11 and February 28, 2014 since she was staying with her boyfriend. Her evidence is that she did not see another bedbug until March 25, 2014. On that date, she texted the landlord a photo and also telephoned him. The landlord requested a photo by email and she sent him one.

The tenant gave evidence that the landlord told her on March 25, 2014 that he would book an exterminator. She says the parties met sometime between March 26 and 28. In that meeting, the landlord asked her to agree to move out if the bedbug treatment did not work. She wanted the landlord to use a heat treatment, rather than a spray treatment, since she is under the impression that heat treatment is more effective. She says she agreed to move out if heat treatment did not work.

The landlord contacted her on March 28 and said the pest removal company told him they could not heat treat only the lower unit; he asked the tenant if spray treatment would be OK. The tenant contacted the pest control company again herself and on April 2, 2014 sent the landlord an email. She told him that he could, in fact, just heat treat the lower unit. She also told him that if he wished to do a spray treatment, she would agree but that she did not agree to move out if the spray treatment did not work.

Later that day, the landlord gave the tenant a notice to end tenancy for cause. The stated reason for ending the tenancy was that the tenant had assigned or sublet the rental unit without the landlord's written consent. He told the tenant by email that she was not the original tenant he had a tenancy agreement with.

The tenant did not dispute the notice to end tenancy, however she gave evidence at the hearing that the landlord had long been aware that she was a successor tenant to the tenant he had a tenancy agreement with.

The tenant arranged to move out at the end of April 2014. She had all of her possessions heat-treated for bedbugs after she moved out of the rental unit and before she moved into her new home. To accomplish this, she rented a closed truck to have the heat treatment in. Her evidence is that she would not have rented a closed truck if she had not needed to do the heat treatment; instead, she would have used her father's pickup truck to move.

The tenant gave evidence that there was also a problem with mold in the garage and bathroom of the rental unit throughout her tenancy. She says her first roommate asked the landlord to do something about it but he did not. Asked if there was any impact on her tenancy, she noted she could smell the mold.

The tenant gave evidence that the original tenants paid the landlord a security deposit of \$425.00 in about February 2012. As the original tenants moved out, succeeding tenants paid the original tenants their portions of the security deposit. The successor tenants (including the applicant) moved out on April 30 and May 1, 2014. As a successor tenant she claims the security deposit.

The tenant gave evidence that she and the other successor tenant have not yet provided their forwarding address to the landlord in writing. I advised the tenant that Section 38 of the Act requires that tenants provide their forwarding address in writing in order to trigger the landlord's 15-day time frame to return or make a claim against the security deposit.

Analysis

I find the landlord had a duty to deal with a possible bedbug infestation and he did not meet that duty. I find the duty arose in mid-December 2013 when the tenant provided the landlord with a photograph of a bedbug she found in the rental unit. I find that at that point, the landlord was obligated to seek professional assistance from a pest control company.

The landlord did not seek professional assistance from a pest control company at that point or at any time through April 2014 when the tenancy came to an end. Despite that the tenant agreed to try several “home treatments” of insecticide, effective treatment of an insect problem is the responsibility of the landlord.

The landlord’s stated reason for evicting the tenant appears to have been a pretext. I find it very unlikely that the landlord was troubled by the fact that a successor tenant had taken over the tenancy. Based on the timing of the eviction, it seems clear that the landlord wished to evict the tenant because she kept demanding he treat the rental unit for bedbugs.

I find the landlord’s failure to deal with bedbugs in the rental unit necessitated that the tenant have her possessions professionally treated prior to being moved to her next home. Therefore, I find the tenant is entitled to compensation for her costs in having her possessions professionally treated for bedbugs. The tenant is entitled to the cost of renting a truck at \$196.24 and the cost of the heat treatment itself at \$577.50.

At the time the tenant bought the mattress covers (December 3, 2013), the landlord did not yet have information to verify the existence of bedbugs. Therefore, at that time his duty to deal with the problem had not yet arisen. The tenant’s purchase of mattress covers was therefore not necessitated by any failure of the landlord. For that reason, her claim for compensation for mattress covers is dismissed.

The tenant also claimed a 5% rent reduction for the length of her tenancy based on problems with mold and with bedbugs. I find the tenant did not present evidence that the existence of mold had any significant impact on her tenancy and I decline to award compensation for the mold issue. The bedbug issue is more significant. The landlord appears to have had some willingness to deal with the problem until April 2nd when he not only abandoned efforts to deal with the problem but evicted the tenant for her repeated requests that he deal with it. While the tenant did not dispute the eviction, I find she is entitled to a 50% rent reduction for the month of April 2014 on the basis of

the landlord's retaliatory behaviour. The tenant is entitled to compensation of \$425.00 as a rent reduction.

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

Since the tenants have not yet provided their forwarding address to the landlord in writing, their claim for the return of their security deposit is premature. I dismiss the tenant's claim for the return of the security deposit, with leave to reapply.

The tenant also applied to recover the costs of duplicating documents and photographs for the hearing. The Act only makes provision for parties to recover their RTB filing fee, and not any other costs of participating in a hearing. Those claims are therefore dismissed.

The amounts due the tenant is \$773.74 (bedbug treatment and truck rental) and \$425.00 (rent reduction), for a total of \$1,198.74. I grant the tenant a monetary order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The only address the landlord has provided is the rental unit address. For that reason, I order that the tenant may serve the landlord with the monetary order at the rental unit address.

Conclusion

I grant the tenant a monetary order for \$1,198.74. The tenant's claim for the return of her security deposit is dismissed with 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: August 18, 2014

Residential Tenancy Branch

