



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for damages to the rental unit, permission to retain the security deposit, and for the return of their filing fee.

The Landlord attended the hearing. The Landlord was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post Registered mail, sent on May 24, 2018, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on February 1, 1995, as a one-year fixed term tenancy that rolled into a month to month after the first year. Rent in the amount of \$810.00 is to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$405.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that on December 22, 2017, law enforcement officials attended the Tenant's rental unit due to reports of an odour of a decomposing body coming from the Tenant's rental unit. The Landlord testified that law enforcement officers located a body of a deceased individual in the rental unit, that had been there for several weeks. The Landlord stated that law enforcement officers had requested his attendance at the rental unit that day as the Tenant was out of town. The Landlord testified that when he went into the rental unit he noted that several rats had gotten in and had been feeding on the body of the deceased.

The Landlord testified that the law enforcement officers had advised him that they had been in contact with the Tenant and that she was aware they were entering her rental unit to remove the body and any evidence if required. The Landlord testified that he contacted the Tenant, that same day, to advise her of the rats that entered her rental unit, and to discuss clean up of the damage caused to the rental unit by the decomposing body and the rat's infestation. The Landlord testified that the Tenant had advised him that the deceased individual had been in her rental unit, as she had sub-let the unit to him while she was out of town. The Landlord stated that he requested verbal approval from the tenant to start cleaning up and treating the rat infestation right away. The Landlord testified that the Tenant refused, and told the Landlord not to go into her rental unit until she returned. The Landlord stated that he respected the Tenant's request, and did not start cleaning up at that time.

The Landlord testified that the occupant of the unit next-door to the Tenant's unit contact him at the beginning of April 2018, to advise him that there were rats in her unit. The Landlord testified that he inspected the next-door unit and discovered that the rats from the Tenant's rental unit had started to move over to the next-door unit.

The Landlord contacted the Tenant and to tell her of the continued rat infestation in her unit, and advise her that the rat infestation had spread into the neighbouring unit. The Landlord testified that he now insisted that the Tenant give him permission to clean up

and bring in pest control. The Landlord testified that the Tenant responded with “do what you need to do.”

The Landlord testified that he arranged for professional pest control to treat both units on April 11, 2018, at the cost of \$1,140.00. After the pest control treatment was complete, the Landlord testified, he needed to bring in a professional trauma scene cleanup company to remove a large number of dead rats and clean up blood and rat feces that was throughout both units. The Landlord testified that the bills for the trauma scene cleanup were \$2,456.51 for the Tenant’s rental unit and \$719.32 for the unit next-door. The Landlord provided the invoices from the professional pest control company and the trauma scene cleanup company into documentary evidence.

The Landlord also testified that the occupant of the unit next-door had to be put up in a hotel for three days while the pest control company treated her unit. The Landlord testified that the hotel costs incurred by the Landlord were \$721.90. The Landlord provided the hotel invoice into documentary evidence.

The Landlord also testified that the Tenant returned to the rental unit on April 27, 2018, and was upset that some of her belongings had been placed in sealed plastic bags. The Landlord stated that he advised the Tenant that it had been done by the trauma scene cleanup and the pest control teams that had treated and cleaned the rental unit.

The Landlord testified that he is seeking the recovery of the full costs for the trauma scene cleanup and pest control for both the Tenant’s rental unit and the next-door unit, as well as the hotel costs for the occupant in the unit next-door. The Landlord testified that the cleanup and pest control needed in the next-door unit was a result of the Tenant refusing to allow the Landlord to enter the rental unit earlier to deal with the rat infestation.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I acknowledged that the circumstances surrounding the death of this individual were unfortunate; however, I find there has been significant damage to the Landlord’s property, due to the length of time between this individual’s death and the discovery of the body.

I find that the Tenant breached section 32(3) of the *Act* when they permitted someone on the property that caused damage, even if that damage was unintentional, and that the Tenant is responsible for the costs associated to repairing that damage.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant’s breach of section 32 of the *Act* resulted in a loss to the Landlord and that the Landlord has provided sufficient evidence to prove the value of that loss. I find the Tenant responsible for the costs associated with cleaning and treating the Tenant’s rental unit.

However, I find that the Tenant is only responsible for the costs associated with damage caused to her rental unit. As I find that the Landlord had not mitigated his losses as required by Section 7 of the *Act*. I find that the Landlord’s delayed response in taking the necessary steps to treat rat infestation in the Tenant’s rental unit lead to the rat infestation spreading into the next-door unit.

I understand that the Landlord was denied verbal permission for the Tenant to enter the rental unit to treat the rat infestation. However, I find that the rat infestation was an emergency repair under Section 29(f) of the *Act* and that the Landlord did not require permission from the Tenant to enter her rental unit to conduct an emergency repair.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(f) an emergency exists and the entry is necessary to protect life or property.

Therefore, I find that the Tenant is not responsible for the costs associated with the cleanup and treatment of the next-door unit or the costs to house the occupant of that unit in a hotel during treatment. As the invoice provided by the Landlord for the pest control treatment does not indicate specific costs per unit, I am awarding the Landlord 50% of the total pest control costs, to treat the Tenant's rental unit.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,621.51. The Order is comprised of \$570.00 (50%) of the pest control costs, and \$2,456.57 (100%) of the trauma scene clean up of the Tenant's rental unit, less the \$405.00 that the Landlords hold as a security deposit.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

<u>Item</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Pest Control	\$1,140.00	50%	\$570.00
Cleanup- Tenant's Unit	\$2,456.51	100%	\$2,456.51
Cleanup- Next-door	\$719.32	0%	\$0.00
Hotel	\$721.90	0%	\$0.00
			\$3,026.51
Security deposit			-\$405.00
			\$2,621.51
Filing fee			\$100.00
Due			\$2,721.51

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$2,721.51**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 23, 2018

Residential Tenancy Branch