



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord via xpress post on September 11, 2020. A receipt for same was entered into evidence. The landlord confirmed receipt of the above package on or around September 15, 2020. I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The tenant moved into the subject rental property on September 6, 2018 and moved out at the end of September 2018. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that the landlord did not complete a move in condition inspection at the beginning of this tenancy. The landlord testified that he did complete a move in condition inspection but no longer has a copy of it. No condition inspection reports were entered into evidence.

The tenant testified that a student from the Law Student's Legal Advice program sent the landlord a letter dated November 19, 2018 requesting the return of the tenant's security deposit to the Law Student's Legal Advice program. The landlord testified that he did not receive the above letter. No proof of service documents were entered into evidence.

The tenant testified that the subject rental property was dirty and infested with fleas when she moved in on September 6, 2020. The tenant testified that she notified the landlord of same via text on September 7, 2020. The September 7, 2020 text was entered into evidence. The tenant testified that the landlord refused to deal with the flea issue so she hired an exterminator who attended at the subject rental property on September 17, 2020. The tenant entered into evidence an invoice from the exterminator in the amount of \$183.75 and a description of services which states:

- Inspected suite, it is determined there is a flea infestation.
- Treated for fleas performed crack + crevice spray
- Fleas were coming out from underneath the baseboards. It is clear this has been an ongoing issue brought in from previous tenant.

The landlord testified that the tenant notified him of the flea infestation shortly after the tenant moved in, but he did not believe that there was a flea problem because other

tenants in the subject rental building have not complained of flea bites. The landlord testified that after receiving many complaints about the fleas from the tenant, he was willing to hire an exterminator. The landlord did not enter any documents into evidence but pointed to an email chain entered into evidence by the tenant in which he offers to hire an exterminator. The email is dated September 17, 2020. The tenant testified that the landlord only offered to hire an exterminator after she already incurred the expense and the extermination had already occurred. The tenant testified that she is seeking the landlord to pay for the cost of the extermination.

The tenant testified that the exterminator told her not to go into the subject rental property for a number of hours. The tenant testified that she informed the exterminator that she has bad allergies and he advised she stay away for a night to be safe. The tenant testified that she spent the next three nights in a hotel because she was concerned about the fumes from the flea poison and because the exterminator told her that flea eggs would not be killed by the treatment and that the eggs would continue to hatch over the next few weeks. The tenant testified that she did not want to continue to get bitten by fleas for the rest of the month. The tenant is seeking reimbursement for her hotel stay in the amount of \$1,149.38. Receipts for same were entered into evidence. The tenant entered into evidence a doctor's note dated September 23, 2020 which states that the tenant has multiple flea bites on her body.

The landlord testified that he is not responsible for the tenant's choice to stay in a hotel as she could have stayed in the subject rental property. The tenant testified that she moved into new accommodation on September 20, 2020 after signing a mutual agreement to end tenancy with the landlord on September 18, 2018. The mutual agreement to end tenancy was entered into evidence.

The landlord testified that he signed the mutual agreement to end tenancy and had an oral agreement with the tenant that if he was unable to find a new tenant for October 2018, he would be permitted to retain the tenant's security deposit. The tenant denied that the existence of the above oral agreement.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director

may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person 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.

Section 32(1) of the *Act* states:

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

Based on the tenant's testimony, the text messages entered into evidence and the description of services provided by the exterminator, I find that the subject rental property had a flea infestation when the tenant moved in. I find that the landlord breached section 32(1) of the *Act* by providing the tenant with accomodation infested with fleas.

I find that it was reasonable for the tenant to hire an exterminator because the landlord initially refused to hire one and, as stated in his testimony, did not believe the tenant. I find that the correspondence between the two parties gave the tenant no reason to believe he would change his mind.

Residential Tenancy Policy Guideline #1 states:

The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

I find that the landlord is responsible for the cost of hiring the exterminator in the amount of \$183.75.

I find that it was reasonable for the tenant to stay at a hotel from September 17-20 to avoid being bitten by hatching fleas. I find that the necessity of a hotel stay was directly caused by the landlord's breach of section 32 of the *Act*. I find that the tenant has proved the quantum of her loss by providing receipts for the hotel stays. I find that the tenant mitigated her loss by quickly finding a new rental property just three days after the treatment. Pursuant to my above findings and section 67 of the *Act*, the tenant is entitled to recover the cost of her hotel stay in the amount of \$1,149.38.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23(4) of the *Act* states:

The landlord must complete a condition inspection report in accordance with the regulations.

Section 24(2)(c) of the *Act* states:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The obligation to complete a move in condition inspection report rests with the landlord. The parties disagree on the completion of a condition inspection report. I find that the landlord has not proved on a balance of probabilities that he completed a move in condition inspection report with the tenant, contrary to section 24(2)(c) of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection report, I find that the landlord's eligibility to claim against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished.

I find that the landlord has not proved on a balance of probabilities that the tenant agreed that he could retain her security deposit.

I find that the tenant has not proved that the landlord was served with the tenant's forward address in writing as no proof of service documents were provided and the landlord denies receiving it.

Section 39 of the *Act* states:

- 39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
 - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Section 38(1) of the *Act* states:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that since the tenant has not proved that the landlord was served with her forwarding address and as more than one year has passed since the end of this tenancy, the right of the tenant to the return of the deposit is extinguished, pursuant to section 39 of the *Act*. Section 39 of the *Act* applies despite the action of section 23 of the *Act* because the landlord is not required to return a deposit until a forwarding address is provided, pursuant to section 38 of the *Act*.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenant's rights to the return of the security deposit is extinguished. The landlord is permitted to retain the tenant's security deposit.

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Flea treatment	\$183.75
Hotel costs	\$1,149.38
Filing Fee	\$100.00
TOTAL	\$1,433.13

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: December 15, 2020

Residential Tenancy Branch