

## **Decision**

### **Dispute Codes:**

MNDC

RR

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### **Introduction**

I have been delegated authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Tenant’s application under sections 67, 62(3), 50, 65(1) and 72(1) of the Act.

All of the information in the case file was reviewed and the hearing for this Application proceeded on its merits.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

Whether or not the Tenant is entitled money owed or compensation for damages or loss under the Act, *Residential Tenancy Regulations*, or the Tenancy Agreement;

Whether or not the Landlord should be ordered to comply with the Act, *Residential Tenancy Regulations* or Tenancy Agreement;

Whether or not the Tenant should be allowed a reduction in rent for repairs, services or facilities agreed upon but not provided; and

Whether or not the Tenant should recover the cost of filing this application from the Landlord.

### **Background and Evidence**

The Tenant and Landlord agreed on the following issues:

- The Tenancy started on September 26, 2008;
- There is a fixed term lease for the period of one year, expiring October 1, 2009;
- Monthly rent for the rental unit is \$850.00;
- The Tenant paid a security deposit in the amount of \$425.00 on September 26, 2008. The Tenant paid a pet deposit in the amount of \$425.00 on October 5, 2008.

### **Tenant's evidence**

The Tenant stated that she has been in a state of hysteria for the past two months, due to her rental unit being overrun by mice. She submitted that she advised the Landlord, who took action by having the building maintenance people come in and repair mouse holes in the walls, but that the mice (and the holes) returned. She again called the Landlord, who in turn called a pest control company. The pest control company did not lay poison on the floors of the suite because the Tenant has a puppy. Instead, they put poison traps on the kitchen counter behind the microwave and close to the food preparation area.

The Tenant submitted that she spoke with the Pest Control officer and was advised that the mice will probably never be completely eradicated, but only controlled. The Tenant submitted that the Landlord knew, or ought to have known, about the rodent problem before the lease was signed, but she was not warned. The Tenant asks for compensation in the amount of \$700.00 for her move-in expenses, together with move-

out expenses. She states that she would not have moved into the unit if she had known about the rodent infestation.

The Tenant said that her suite is uninhabitable and unhealthy because of the continuing presence of the mice and that she has seen them as recently as the night of January 5, 2009. The Tenant alleged that other tenants in the building also have mice. Garbage pick-up for the rental unit has been suspended due to unusually heavy snow-fall, and this is causing further problems by attracting more mice. The Tenant requested a reduction/abatement in rent due to the situation.

The Tenant wants to move from the rental unit due to the rodent problem. She wants to move as soon as possible, thereby not fulfilling the term of the lease, and asks for reimbursement of her move-in and move-out expenses.

#### Landlord's evidence

The Landlord acknowledged that the Tenant is highly distraught over the presence of mice in the rental unit. However, the Landlord stated that she has complied with the Act and the tenancy agreement and done everything she can to eradicate the mice from the rental unit by having the mouse holes blocked, and by calling in A-Pest Control three times to deal with the problem. The Landlord submitted written evidence, a hand-written note stating, in part:

“The rodent problem isn’t constant but every time it turns cold then we sometimes see an increase in activity……. We have taken the necessary steps to minimize these occurrences but it is an on-going fight.”

The Landlord submitted that bait boxes have been placed on the property, but no poison could be used in the Tenant’s suite because of concern for the puppy.

The Landlord stated that she would not hold the Tenant to the lease, and that the Tenant can move out without penalty prior to the end of the term.

## **Analysis**

I find that the Tenant is entitled to some rent abatement to compensate her for the lack of sanitary conditions in her kitchen and the loss of quiet enjoyment of the residence due to the presence of the mice. The Tenant in her application asks for a minimum of 50% in rent abatement, calculated from the day she moved in to the rental unit. The Tenant moved in to her suite on September 26, 2008, but the mice first appeared in her suite on November 17. Therefore, I do not grant her abatement in rent from September 26, 2008. Furthermore, I find that 50% is too high a number and I find that the Tenant is entitled to an abatement in rent in the amount of 25% pro-rated daily from November 17, 2008 (the day that the mice were discovered) to January 31, 2009.

The Landlord agreed that the mice are not controlled at this stage, that it is a slow process and that they expect the mice to be a problem over the winter months. Therefore, I further find that the Tenant is entitled to a rent reduction of 25% for the months of February, 2009 and March, 2009, or until the Tenant moves out of the suite, whichever date shall first occur.

The Landlord has agreed that she will not hold the Tenant to the lease, and that the Tenant may move out prior to the end of term, without penalty. I therefore find that the Tenant is at liberty to move out of the rental unit on ten days' written notice to the Landlord. On receiving the Tenant's notice, the Landlord must refund the Tenant any rent paid for a period after the effective date of the Tenant's notice.

I find that the cost of this application should be born equally between the Tenant and the Landlord. I order that \$25.00, representing half of the filing fee, be deducted from the rent owed to the Landlord.

Therefore, rent abatement for November 17, 2008 to January 31, 2009 shall be \$515.28, calculated as follows:

- Monthly rent is \$850.00

- Rent per diem ( $\$850 \times 12 / 365$ ) = \$27.12
- Amount of rent abatement per day ( $\$27.12 \times 25\%$ ) = \$6.78
- Total ( $\$6.78 \times 76$  days) = \$515.28

Rent for the months of February and March, 2009 shall be \$647.50, calculated as follows:

- $\$850.00 \times 25\% = \$212.50$
- $\$850.00 - \$212.50 = \$647.50$

I order that the Tenant may deduct \$540.28 (the amount of the abatement plus half of the filing fee) from the rent due on February 1, 2009, leaving a balance owing of \$107.22 for the month of February, 2008.

The Landlord's evidence shows that the Tenant first called the Landlord on November 17, 2008, to complain about the mice in her rental unit. I make no Order with respect to the Landlord complying with the Act, as I find that the Landlord attended immediately to the Tenant's concerns and continues to do what she can to eradicate the rental unit of mice. There were no mice in the rental unit when the Tenant took possession, and I find that the Landlord had no duty to the Tenant to warn of the possibility of mice in the future. I dismiss the portion of the Tenant's application for moving expenses.

### **Conclusion**

I hereby order that the Tenant is entitled to put the rent abatement, together with half of the filing fee for this application, in the total amount of \$540.28 towards her February rent. With her reduction of \$212.50 for the month of February, 2009, the balance owing for the month of February, 2009 is \$107.22. Rent for the month of March, 2009, is \$647.50.

I order that the Tenant may terminate the lease with 10 days written notice to the Landlord. On receiving the Tenant's notice, the Landlord must refund the Tenant any rent paid for a period after the effective date of the Tenant's notice, at a per diem rate of \$20.34.

January 11 , 2009

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