



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: ERP MNDC MNR MNSD OPR PSF RP FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

FILE A -LANDLORDS APPLICATION:

This is an application for an Order of Possession and for a monetary order for 2824.76 and a request to keep the full security deposit plus interest towards the claim.

FILE B -TENANTS APPLICATION:

This is an application for a monetary order for \$4000.00 for damages and return of the security deposit plus interest.

Background and Evidence

The landlord has possession of the rental unit and therefore an Order of Possession is no longer required.

The landlord is claiming that the tenant failed to pay rent on November 1, 2008 and then phoned in November 02, 2008 complaining of mold in the rental unit.

The landlord further claims that when she went to the rental unit to see what the tenant was talking about, she found that the tenant had caused extensive damage to the rental unit.

The landlord further claims that on inspection she found some black mildew like powder had been exposed by the tenants who had removed a large amount of baseboard and window casing; however the landlord felt it could be easily cleaned up using a bleach solution.

The landlord further claims that the tenant did not want the landlord to attempt any clean-up and kept trying to force her uncles card on the landlord. The tenant's uncle is a contractor and it is the landlord's belief that the tenant was just attempting to get work for her uncle.

The landlord further stated that when the rent was still not paid by November 3, 2008, she served the tenant with a 10 day Notice to End Tenancy and the tenant

subsequently vacated on November 09, 2008 without repairing any of the damage she had caused.

The landlord further stated that the tenant refused to do a move-out inspection and did not return the keys to the rental unit.

The landlord stated that she was not able to re-rent the unit and is therefore asking for the full November 2008 rent of \$1300.00.

The landlord is also asking for damages totaling \$1105.45.

The landlord is also requesting the filing fee \$50.00

Total amount requested by the landlord reduced to \$2455.45 from the original \$2926.76.

The landlord is requesting an order allowing her to keep the full security deposit towards this claim and is asking for a monetary order for the balance. The landlord claims that although the tenancy agreement says that the tenant paid a deposit of \$650.00, and a pet deposit of \$100.00 the tenant actually only paid the security deposit of \$650.00 and never paid the \$100.00 pet deposit.

The tenant is claiming that while preparing the rental unit to do some painting, she found mold behind the baseboards and in the walls and therefore consulted with her uncle who was an authority on mold and was told by her uncle that it was not safe to live in the house as mold was toxic and could make her and her children very ill and recommended that she move out in 24 hours.

The tenant further stated that her uncle told her that there would need to be major restoration work done to get rid of the mold as it was in the drywall and would continue to grow if it was not cut out.

The tenant further stated that she contacted the landlord to come and see the mold; however when the landlord came to inspect the mold, the landlord refused to take her uncles card, claiming that the mold could be cleaned up with a bleach solution.

The tenant further stated that the next day the landlord gave her a 10 Notice to End Tenancy and since her uncle had recommended that she vacate as it was not safe to live in the unit, the tenant decided to comply with the Notice to End Tenancy and vacated on November 09, 2008. The tenant admitted that she did not participate in a move-out inspection.

The tenant stated that it is her belief that the landlord knew that the rental unit had previously been used as a grow-op and that she was given the Notice to End Tenancy because the landlord did not want to do the major repairs that were required to rectify the mold issue.

The tenant stated that the mold in the rental unit had caused respiratory issues for her children and provided a Doctors note which confirms that the children had suffered recurrent respirator illnesses while living in the rental unit, which had stopped occurring after the tenants moved out of the rental unit.

The tenant therefore does not believe that she should be held liable for any of the landlord's losses as she was basically forced to vacate on short notice, for health reasons and that the landlord should be held liable for the tenant's expenses (\$1708.65) that resulted from mold problem and having to move due to the mold.

The tenant is also requesting her filing fee of \$50.00 and the full return of her security deposit plus interest (\$652.16).

Total amount requested by the tenant reduced to \$2410.81 from the original \$4000.00.

Analysis

It is my finding, on the balance of probabilities, that there was mold contamination in the rental unit and that the mold may well have been causing health issues for the tenants children. Therefore the tenant's decision to vacate the rental unit was a reasonable decision under the circumstances.

I therefore will not allow the landlords claim for rent

I also deny the landlords claim for damages to the rental unit as the damages would likely have been repaired by the tenant, had the tenancy been able to continue, and the landlord has not met the burden of proving that the tenants tampered with the gas fireplace or that the tenants took a rug from the rental unit.

I will allow the landlords claim for water usage (\$60.05) as water was not included in the rent, and replacing the locks and keys (\$104.16), because although the tenants witness claims to have mailed the keys to the landlord, there is no evidence to show that the landlord ever received the keys.

Total amount allowed for the landlords application-----\$165.21

The landlord therefore may retain \$165.21 of the security deposit plus interest.

However it is also my finding that the tenants has not met the burden of proving that the landlord knew of the mold problem before it was pointed out to her by the tenant or that the landlord knew that the rental unit had previously been used as a grow-op.

It is my decision therefore that the landlord cannot be held liable for the tenants moving expenses as they did not result from any willful or negligent actions on the part of the landlord.

I also deny the tenants claim for paint receipts as again this is a cost that would not have been passed on to the landlord had the tenancy continued.

I will allow the claim for the return of the security deposit less the \$165.21, deduction I have allowed.

Although the tenant did not participate in the move-out inspection, the landlord has not shown that she offered the tenant a second chance to do the inspection by serving the tenant with the required "final opportunity to inspect" form. Therefore the tenant has not waived her right to the return of the deposit.

It is also my finding that the security deposit plus interest held is \$652.16 and I accept that the tenant failed to pay the \$100.00 pet deposit.

Conclusion

I have allowed \$165.21 of the landlords claim. The landlord may therefore retain \$165.21 of the tenant's security deposit plus interest, and I have issued an order for the remaining \$486.95 to be paid to the tenant.

The remainders of both claims are dismissed.

Dated: February 13, 2009