



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNDC & MNSD

Introduction:

This hearing dealt with an application by the tenant seeking the return of her security deposit and seeking damage or loss under the *Act* due to breach of the tenancy agreement or *Act* by the landlord. Both parties appeared, gave affirmed evidence and had the opportunity to respond to the evidence presented by the other party.

Issues to be Determined:

Is the tenant entitled to the return of her security deposit plus interest? Has the landlord breached section 32 of the *Act* by failing to provide a safe residence for the tenant?

Background and Evidence:

This tenancy began on May 1, 2008 for the monthly rent of \$450.00 and a \$200.00 security deposit paid on April 28, 2008. No move-in or move-out condition inspections were completed in writing.

The tenant stated that there were multiple deficiencies with the rental unit throughout her tenancy and despite her attempts to raise the issues with the landlords they never fixed the problems. The tenant provided a copy of a letter dated July 9, 2008 which she states was provided to the landlord. This letter indicated the following problems the tenant was experiencing at the rental unit:

- Inconsistent availability of hot water;
- Problems with the locks;
- Excessive noise from upstairs occupants;
- Fumes from the lawnmower entering the rental unit; and
- Difficulty collecting her mail.

The tenant wrote the landlords again on October 6, 2008 citing the following unresolved issues causing her to vacate the rental unit effective September 24, 2008:

- Open electrical outlet in close proximity to sink;
- Lack of heat;
- Door floor guard presenting risk for tripping;
- The repeated threat of noxious fumes entering the suite from the attached garage.

The tenant could not explain when the door floor guard and the outlet by the sink became an issue or why they were not raised with the landlords previously. The tenant stated that on September 24, 2008 she called the fire department about the fumes she was experiencing in her suite. She stated that the fire department required that the landlord remove some gas containers from the garage and told not to run vehicles inside the garage. The tenant did not provide me any evidence from the fire department or any evidence that there was a threat to her health and safety or that the landlord was not complying with health and safety regulations.

The landlords denied receiving the October 6, 2008 letter from tenant and stated that they were never informed of these problems. The only issue acknowledged by the landlords were the problems with the locks in the rental unit which they indicated were fixed. The landlords acknowledged that the fire department came on September 24, 2008 while they were cutting the lawn. The landlord acknowledged that there was an issue with the gas canisters. The landlords denied any breach to municipal health and safety regulations or any further action by the fire department.

Analysis:

The tenant has the burden of proving her allegations in support of her application for compensation under the *Act*. I have several concerns about the tenant's position. I have no evidence corroborating that the tenant served the landlords with the July 9, 2008 letter regarding the problems with the rental unit and I have no corroborative evidence from the fire department supporting the tenant's position that the fumes in her suite represented a danger to her health and safety. The tenant also did not provide any medical evidence in support of her position.

The tenant's agent provided evidence that he was present when the October 6, 2008 letter was delivered to the landlords. This evidence is contrary to the evidence of the landlords that they were not served this letter and their children do not recall being given anything. The tenant stated that the letter was handed to one of the landlords directly.

Given the evidence from the tenant's representative that he witnessed the delivery of the October 6, 2008 letter, I accept that the landlords were served with the tenant's forwarding address on that date. Based on this determination I grant the tenant's claim for the return of double her security deposit plus interest as the landlord failed to comply with section 38(1) of the *Act*.

However, I deny the tenant's application for moving expenses and storage based on her allegation that she had to vacate early due to the conditions she was experiencing. I am not satisfied that the tenant took all necessary and reasonable steps prior to vacating the rental unit and the tenant failed to have any changes made to address her concerns by filing an application for dispute resolution. The tenant also failed to provide any evidence that there was a health and safety issue. While I can accept that the tenant was concerned about her health I am not satisfied that the landlords are financially responsible for her decision to end this tenancy.

Conclusion:

I find that the tenant has established a total monetary claim for the sum of **\$402.01** comprised of double her security deposit plus interest. I grant the tenant a monetary Order for this sum.

Dated February 17, 2009.

Dispute Resolution Officer