



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement to recover double the security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on October 22, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to recover double the security deposit?
- Is the tenant entitled to money owed or compensation for damage to her personal belonging from mould?

Background and Evidence

Both Parties agree that this was a month to month tenancy which started on April 01, 2009 and ended by mutual agreement on September 30, 2009 although the tenant actually moved from



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the suite on September 20, 2009. The rent for this basement suite was \$1,250.00. The tenant paid a security deposit of \$625.00 on March 11, 2009.

The tenant testifies that she gave the landlord her forwarding address in writing on September 20, 2009. On September 22, 2009 the landlord gave the tenant a cheque for \$425.00 accompanied by a letter and copies of estimates explaining that he had deducted \$200.00 for damage to the suite, the removal of some garbage from the suite and a missing Rubbermaid sink cover.

The tenant claims she did not agree with these charges and did not agree that the landlord could deduct any amount from her security deposit. The tenant claims that the damage was minor and normal wear and tear. The tenant did not cash this cheque as she did not want the landlord to assume she had accepted the deductions from the security deposit. After the tenant filed her application she received another cheque and letter from the landlord as he assumed the tenant had not received the first cheque. The first cheque was then cancelled by the landlord. The tenant seeks double the security deposit back as the landlord did not return her security deposit in full within 15 days of receiving her forwarding address in writing.

The landlord claims he did keep \$200.00 from the tenants' security deposit as the tenant had caused damage to the suite. The landlord had obtained two higher quotes from painters over \$200.00 to fill some deep gouges and mark on the walls, cover water stains on the bathroom ceiling and re-paint areas of the suite. The landlord also had to remove garbage left behind by the tenant and repair a heater which was damaged. The landlord testifies that he felt \$200.00 was a reasonable amount to deduct from the security deposit. The landlord has submitted photographs of the damage he claims the tenant has done to the suite and the garbage left behind.

The tenant testifies that some of her furniture was damaged by mould in the suite. The tenant claims that she returned from a two week trip overseas and found mould growing on her mattress, baseboard and storage drawers under the bed. The tenant claims she also found mould in her closet on some other personal items. The tenants trip was in August and she

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agrees it was high humidity that time of the year but she claims she did not notice any dampness in the suite other than an area of damp under the kitchen sink where mould had grown by the pipes, corners, along the bottom of a shelf and mould covering a Rubbermaid sink cover. The tenant claims she has suffered from health issues due to the presence of mould in the suite.

The tenant claims the bed base was two years old and is therefore claiming half of the cost of replacing it due to depreciation to a sum of \$738.15. The tenant contracted a company to remove the bed and claims half this cost to an amount of \$72.98. The tenant is not seeking costs for the mattress as it was ten years old. The tenant has provided photographs of some mould which appears to be on some wooden objects which the tenant claims are the drawers under the bed and other photographs showing mould on the mattress. The tenant has provided a photograph of a similar bed in a store including its price tag of \$1,295.00

The landlord disputes the tenant's claim. He states that the house is a new build and all building work was done to code and all inspections were carried out by the city. The landlord also claims that the home is heated by hot water not forced air and an allergen filter is fitted to the furnace to prevent spores and allergens entering the home. The suite is not dark or damp but is a garden level suite. The landlord claims that he has not had any issues with mould in the suite since the tenant moved out the new tenant has not experienced any mould issues.

The landlord argues that when the tenant told him about the mould he offered to have a look but was told by the tenant that she had cleaned it up. The landlord also argues that the tenant has not provided him with any medical information from her doctor in relation to any health issues she has experienced. The landlord argues that the tenant must have left something damp in the bed which caused the mould to spread onto the bed while she was away for two weeks as she did not have any issues before she went away and no issues have been reported since that time.



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Analysis

I have reviewed all the evidence before me, including the affirmed evidence of both parties. Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

I find that the landlord did receive the tenants forwarding address in writing on September 20, 2009. As a result, the landlord had until October 05, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did return \$450.00 of the security deposit on September 22, 2009 and deducted \$200.00 for repairs to damages and garbage removal without the tenants consent or without applying for Dispute Resolution to keep this sum. Consequently, pursuant to section 38(6) of the *Act*, the landlord must pay the tenant double the amount of the security deposit.

With regards to the tenants claim for money owed or compensation for damage or loss; I find in this matter the tenant has the burden of proof and must show that the damage to her belongings was caused by mould from the rental suite or negligence on the part of the landlord and not due to any negligence on her part. When a tenant's evidence is contradicted by the landlord, the tenant will need to provide additional corroborating evidence to satisfy the burden of proof. In this instance I find the tenant has not provided sufficient evidence that the mould on the bed was caused through any fault of the landlord or that it emanated from the suite and not from items placed on or stored within the bed itself as suggested by the landlord. The tenants' photographs do show mould on the bed but these are not sufficient to determine where the mould came from. The tenant has provided no other evidence in connection with the mould or the effect it had on her health. Consequently this section of the tenants claim is dismissed without leave to reapply.



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As the tenant has been partially successful I find she is entitled to recover half the amount of the filing fee from the landlord pursuant to section 72(1) of the Act. The tenant will receive a Monetary Award as follows:

Double the security deposit	\$1,250.00
Less the amount of security deposit already returned to the tenant	(-\$425.00)
Total amount due to the tenant	\$850.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$850.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: February 17, 2010.

Dispute Resolution Officer