

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenant – MNDC, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the by the landlord and one brought by the tenant. Both files were heard together. The landlord seeks a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlord also seeks to keep the tenants security deposit and recover the filing fee. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The tenant also seeks the return of her security deposit and to recover her filing fee.

The landlord served the tenant by registered mail on January 25, 2010 with a copy of the Application and Notice of Hearing. The tenant served the landlord by registered mail on February 03, 2010 with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The hearing was reconvened to today's date as the Dispute Resolution Officer was unaware that the tenant had filed an application also and no evidence had been received by the Dispute Resolution Officer for the tenants' application in time for the hearing. The hearing was therefore reconvened to hear the tenants' evidence for her application.

The landlords' agent, the tenant and her witness appeared at the first hearing and the tenant and her second witness appeared at the reconvened hearing. All Parties 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 landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Is the landlord entitled to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Is the tenant entitled to the return of her security deposit?

Background and Evidence

Both Parties agree that this tenancy started on January 01, 2010 although the tenant did not move into the rental unit until January 02, 2010. Rent for this unit was \$885.00 per month which includes parking. Rent was due on the first day of each month. This was a fixed term tenancy which was due to expire on December 31, 2010. The tenant paid a security deposit of \$442.50 on December 31, 2009. The tenant gave the landlord her forwarding address in writing on January 11, 2010.

The landlords' agent testifies that on the day the tenant moved into the rental unit she complained of a strong smell of polyurethane which had been applied to the floor of the unit on December 30, 2009. The landlords' agent state this was a product purchased from a Home Depot store and has been successfully used on 13 other rental units.

The landlords' agent testifies that after the tenant complained of the smell she was given two air fresheners. The agent states the floor was dry when the tenant moved in

and on January 03, 2010 the tenant again complained of the smell. A commercial fan was put in the tenants unit and the landlords' agent states that she could not smell anything in the bedroom of the unit and only a slight smell in the living room. The landlords' agent advised the tenant that she should seek medical advice. The landlords' agent states the unit was ready and suitable for occupancy on January 02, 2010.

The landlords' agent states on January 05, 2010 she received an e-mail from the tenant asking her for the name of the product used on the floor as she could not stay in the unit due to the fumes. The landlords' agent states she gave the tenant the label from the can. The landlords' agent states that on January 10, 2010 she received Notice from the tenant that she would be unable to stay in the unit and would be ending the tenancy on January 12, 2010 due to symptoms from the fumes causing watery eyes and nose and headaches. The tenant stopped the rent cheque for January, 2010.

The landlords' agent testifies that of the three people in the unit from her team none of them experienced any health problems due to fumes, the floor product was applied correctly and the floor was dry before the tenant took possession of the unit. The landlord states the unit was re-advertised in February, 2010 and was rented again on March 01, 2010. The landlord seeks to recover unpaid rent for January of \$885.00 and a loss of income for February, 2010 of \$885.00.

The tenant disputes the landlords' claims. The tenant testifies that strong fumes were evident from the first day she moved in. She states the windows were wide open when she moved in and it was a cold and windy day. The tenant states that the floor was not given the opportunity to dry out properly before she moved into the property.

The tenant testifies that she was told by the manager of the building that they had used an environmentally organic product on the floor. However, when the landlords' agent gave the tenant the label from the can it was evident that this was not an organic product. The tenant also states that the floor had not been sealed and the person who applied the product to the floor was not a professional workman but rather just a friend

of the landlords. The tenant states she suffered with watery eyes, nose and headaches and could not remain in the unit. When the tenant left the unit the symptoms disappeared and returned when she entered the unit again.

The tenant testifies that she turned up the heat to the unit to help dry the floor but this made the fumes even worse. The tenant states she spoke to the duty manager on January 18 after she had moved out and was told her security deposit would be returned. However, the landlords' agent has since denied that conversation and her deposit has not been returned. The tenant seeks to recover the deposit of \$442.50. The tenant also seeks compensation for her moving costs in having to move from the unit again at a sum of \$250.00 and claims the loss of a day's work at \$176.00 because she felt so sick from the fumes.

The tenants witness at the reconvened hearing testifies that his company moved the tenant into her rental unit on January 02, 2010. He claims there was a strong smell in the unit of paint or paint thinners, the windows were open and it was really cold in the unit. The tenants witness suggested to the tenant that she turned the heat up to try to fully dry the floor out. The witness states it appeared as if the floor had not been sealed and that it why the fumes were so strong. The witness claims the floors were not wet but were tacky. The witness testifies that even after a few minutes the fumes made his throat sore and it felt like the inside of his nose was burnt. The fumes also affected his sinuous. The witness claims he asked the landlords' agent what product she had used on the floors and was told it was environmentally safe and was a one layer application. The tenants witness states when he returned on January 11, 2010 to move the tenant from the unit that the fumes were still in the unit. The witness claims as the windows had been left open after the product had been applied it would not have had opportunity to dry correctly due to the weather that time of year.

The tenant has provided a written statement from this witness in which he states he charged the tenant \$250.00 in moving costs.

Analysis

With regard to the landlords claim for unpaid rent for January, 2010; it is clear that the tenant did put a stop on her rent cheque for January, 2010 and therefore did not pay rent for this period. The tenant argues that the landlord did not comply with section 32 of the *Act* and provide a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit did not make it suitable for occupation by the tenant. The tenant argues that the landlord did not allow enough time after applying this floor product in the rental unit for it to dry thoroughly, did not apply it correctly or seal it according to the instructions. The tenant argues that she could not remain in the rental unit because of the fumes and had to end the tenancy.

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness; it is my decision that the landlord did not allow enough time for the floor to dry thoroughly and for the fumes to dissipate after applying this product. When a tenant rents a unit she would naturally be expecting to be able to stay in the unit from the first day of the rental however, the landlord choose to apply this product to the floor of the unit on December 30, 2009 one day before the agreed start date of the tenancy. I find the tenants and her witness's evidence more compelling in this matter and as such I find the landlord was in breach of section 32 of the *Act* and the tenant was entitled to end the tenancy on January 11, 2010.

Consequently I find the landlords' application to recover unpaid rent for January, 2010 and a loss of rental income for February, 2010 is dismissed. I also find the landlord is not entitled to keep the tenants security deposit or recover the filing fee paid for their application and these sections are also dismissed.

With regard to the tenants claim for moving expenses; I find the tenant moved into this rental unit in good faith and was unable to stay in the unit due to the landlords' breach of

the *Act*. As the tenant incurred additional costs in having to move from the rental unit I find she is entitled to recover her moving costs of **\$250.00**.

With regards to the tenants claim for a loss of earnings for one day; the tenant has provided no evidence that she missed a day of work due to sickness or to the actual cost of this alleged loss of earnings to the sum of \$176.00 consequently, this section of the tenants claim is dismissed.

I find the tenant is entitled to recover her security deposit from the landlords pursuant to section 38 of the *Act*. Consequently, I Order the landlord to return the tenants security deposit of **\$442.50**.

As the tenant has been largely successful with her claim I find she is entitled to recover her **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Moving costs	\$250.00
Total amount due to the tenant	\$692.50

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 **\$692.50**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords' application is dismissed in its entirety without leave to reapply.

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: July 13, 2010.

Dispute Resolution Officer