

## **DECISION**

Dispute Codes      MNSD, MNDC, 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.

### Issues(s) to be Decided

This is a request for a monetary order for \$1949.50. The applicants also requesting that the respondent bear the \$50.00 cost of the filing fee which was paid for the application for dispute resolution.

### Background and Evidence

The applicant testified that:

- They had a severe mould issue in their rental unit, and therefore they had to vacate the rental unit.
- They gave the landlord a written notice to end the tenancy at the end of February 2010, which contained a forwarding address in writing.
- They did not want to stay in the rental unit while the landlord did repairs and therefore requested the return of their security deposit so they could move earlier however the landlord refused to return it.
- To date, the landlord has still not returned their security deposit.

- Due to the health issue caused by the mould they were unable to live in the rental unit for the last month of their tenancy, and therefore ended up staying with relatives for the majority of February 2010.

The applicants are therefore requesting an order as follows:

|   |           |
|---|-----------|
| Return of Feb. 2010 rent for loss of use                                    | \$875.00  |
| Penalty for failing to return security/pet deposit within 15 day time limit | \$537.50  |
| Filing fee  | \$50.00   |
| Total   | \$2000.00 |

The respondent testified that:

- The tenants did give him a Notice to End Tenancy 4 days late, on February 4, 2010 however it did not contain any forwarding address.
- The tenants informed him of the mould issue, and he was fully willing to repair the problem however the tenants denied him access to do so.
- The tenants insisted that they wanted to move out of the rental unit before allowing him to do repairs, and would not allow him in to do repairs while they were still there.
- Had the tenants allowed them to do the repairs there would have been no need for them to vacate.

The respondent therefore believes this full claim should be dismissed, as he had no forwarding address to return the deposit and he was not allowed to deal with the mould issue.

### Analysis

#### Security/pet deposit

The tenant(s) have applied for the return of double their security/pet deposit; however the tenants have not met the burden of proving that they gave the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

The tenant claims that a forwarding address in writing was handed to the landlord; however the landlord denies that claim. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Therefore at the time that the tenants applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

I therefore dismiss this claim with leave to re-apply.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today, July 23, 2010.

#### Compensation for mould

It is my decision that I will not allow the tenants claim for compensation for loss of use due to the mould problem.

The tenant has admitted that they did not allow the landlord access to repair the mould problem, as they did not want repairs being done while they lived in the rental unit; however the landlord cannot be held liable for unhealthy living conditions if he is not given the opportunity to rectify the problem.

The landlord testified that, had he been given access, he was fully willing to address the mould issue and do any repairs that were necessary to alleviate the problem.

Had the landlord refused to do repairs that would be a different matter however in this case it was the tenants who refused to allow the landlord access to do the repairs and therefore I will not order the return of rent for the month of February 2010.

### Conclusion

The claim for the return of the security/pet deposit is dismissed with leave to reapply, and the claim for the return of February 2010 rent, for loss of use, is dismissed without leave to reapply. I also order that the applicants bear the \$50.00 cost of the filing fee which they paid for dispute resolution.

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 23, 2010.

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Dispute Resolution Officer