



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for a Monetary Order money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as a cross application for the return of the security deposit and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. The month to month tenancy started on December 1st, 2010 and ended March 30th, 2011. The rent was \$800.00 per month and the tenant paid a security deposit of \$400.00.

In his documentary evidence, the landlords provided 12 photographs showing electric board heaters, double sided windows, door seals, and a new bathroom fan. Landlord

A.G. disputes that the house had any issues with moisture. He testified that the roof was new, and that there was never a history of mould with other tenancies. He stated that the tenant called on March 27th, 2011 to state that she was leaving at the end of the month. He said that he found new tenants immediately, but that they could not move in until May 1st, 2011. He said that he offered the tenant to forfeit her security deposit in lieu of a loss of one month's rent for April but that she refused. He said that he did not have a conversation with the tenant about mould. He said that after the tenant left, he inspected the house and that he could not find any mould.

In her documentary evidence, the tenant provided 5 photographs showing the presence of mould on her furniture. She testified that she could no longer stay in the house because she became sick; she said that her clothes, mattress and bed sheets were damp from moisture that she assumed came from the floor. She stated that she paid a heat bill of \$303 for two months, but that it did not solve the problem. She said that she notified the landlord in February 2011; that it was not addressed and therefore left at the end of March 2011.

During the proceedings, the parties exchanged views about their evidence and it was apparent that their versions were at complete odds.

Analysis

Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice.

There was no written tenancy agreement or condition inspection reports from the landlord before me. Even a breach of the Act or of a material term of an agreement between the parties does not necessarily entitle the tenant to end the tenancy in a manner that does not comply with the Act. The presence of mould on the tenant's furniture, and its absence anywhere else within the house leaves any determination that the problem originated from the house inconclusive. A remedy for the tenant would have been to promptly seek assistance through the Branch or through dispute resolution to resolve the issue if the landlord failed to attend to it in February. In this case the tenant chose to end the tenancy and she was obliged to give the landlord proper written notice in accordance with the Act.

Conclusion

The tenant's application is dismissed. The landlords are entitled to recover the loss of one month's rent for April 2011. I authorize the landlords to retain the tenants' \$400.00 security for a balance owing of \$400.00.

Since the landlords were successful, I award the landlords recovery of the \$50.00 filing fee and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$450.00.

This Order may be registered in the Small Claims Court and enforced 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: June 01, 2011.

Residential Tenancy Branch