

DECISION

Dispute Codes:

MNSD; MNDC

Introduction

This is the Tenant's application for a Monetary Order for double the amount of security deposit paid to the Landlord and for compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

This matter was scheduled to be heard on November 15, 2011. At the Hearing on November 15, 2011, the Landlord's agent testified that she had provided the Tenant with 40 pages of documentary evidence on November 7, 2011, by registered mail. The Tenant acknowledged receipt of the Landlord's evidence. The Landlord's agent testified that she provided the Residential Tenancy Branch with copies of that documentary evidence on October 21, 2011, by fax. There were only 19 pages of documentary evidence from the Landlord on the case file. Therefore, the matter was adjourned to December 2, 2011, in order to allow the Landlord to re-submit its documentary evidence to the Branch. The Branch received all of the Landlord's documentary evidence on November 21, 2011.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38(6) of the Act?
- Is the Tenant entitled to compensation for mould in the rental unit?

Background and Evidence

This tenancy began on September 1, 2010. A copy of the tenancy agreement was provided in evidence. This was a one year lease, due to expire on August 31, 2011. Monthly rent was \$1,850.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$925.00 at the beginning of the Tenancy.

The Tenant testified that she moved out of the rental unit on June 27, 2011, with the Landlord's permission, because there was black toxic mould in the carpets and walls.

She stated that her family was sick because of the mould, which first appeared on a windowsill in December, 2010, and spread from there to the walls and carpets. The Tenant testified that she told the Landlord about the mould but the Landlord did nothing to remedy the situation. She stated that the Landlord performed regular inspections of the rental property every second month and that in January or February, 2011, the mould was evident when the Landlord did the regular inspection. The Tenant testified that there was also mould underneath her mother's bed, but the Tenant was unaware of that mould until her mother showed the Landlord's agent at the May 18, 2011 inspection. The Tenant seeks compensation in the amount of \$5,950.00 (7 months' rent) from December, 2010 to June, 2011 for this portion of her claim.

The Tenant testified that she received only \$300.00 of her security deposit from the Landlord on July 13, 2011. She stated that she and her mother met with the Landlord's agent to perform a move-out inspection two or three days after she moved out of the rental unit. The Tenant testified that the Landlord's agent told her everything was dusty and that the carpets were not clean. The Tenant testified that she left the rental unit in a reasonably clean state but did not clean the carpets because the Landlord was intending to replace them with laminate.

The Tenant stated that the Landlord's agent told her it would take about two hours to complete the inspection, so she left because her mother could not stand that long. The Tenant testified that the Landlord's agent came to see her later with a copy of the estimate of how much it would cost to clean and make repairs to the rental unit and she refused to sign it. The Tenant seeks a monetary order of double the amount of the security deposit, pursuant to the provisions of Section 38(6) of the Act.

The Landlord's agent testified that the Tenant did not advise the Landlord about mould issues. The Landlord's agent testified that the owner of the rental unit requires visual inspections be done every three months. She stated that the first inspection took place on November 3, 2010, and that the Tenant signed off on the inspection form. The Landlord's agent submitted that the repairs identified on the November Visual Inspection Report were completed by November 10, 2010.

The Landlord's agent stated the next inspection took place on February 7, 2011, and the Tenant made no mention of mould issues, nor was there any sighted. The Landlord's agent stated that there were no identified repairs required and the Tenant signed off on the inspection form.

The Landlord's agent testified that the next inspection took place on May 18, 2011, when mould was seen on the walls and the carpet. The Landlord provided copies of the

Visual Inspection Reports for November 3, 2010; February 7, 2011; and May 18, 2011, in evidence.

The Landlord's agent testified that the rental unit was flooded on March 29, 2011, and that the Tenant did not report the flood until noon the next day. The Landlord's agent testified that the toilet was the cause of the flood due to a crack in the toilet tank. She stated an emergency service work order was placed on March 30, 2011, to replace the Tenant's toilet, and that the carpet and underlay were lifted and dehumidifiers were placed on March 31, 2011. The Landlord's agent testified that the dehumidifiers were removed on April 7, 2011, and an antifungal agent was applied to the floors. At this time, consideration was given to replacing the carpets with new laminate flooring. The Landlord's agent testified that on April 26, 2011, the owner of the rental unit approved the quote to have laminate flooring installed, but the Tenant did not want the laminate installed before she moved out of the rental unit. The Landlord's agent testified that the Landlord also investigated the outside of the house to determine if there were other factors contributing to the moisture and damp, and that on May 3, 2011, repairs were made to the outside of the house.

The Landlord's agent testified that on May 23, 2011, the Tenant gave notice that she would be ending the tenancy at the end of June, 2011.

The Tenant denied waiting until the next day to report the flood and testified that she called the Landlord to report the flood as soon as it happened. She stated she turned off the water to the toilet as soon as she discovered the crack in the tank. The Tenant testified that she had a professional mould inspector inspect the rental unit. Copies of the first 2 pages of the report dated May 12, 2011, were provided in evidence.

The Landlord's agent testified that the Landlord was not aware of the mould inspection report until after the Landlord received the Tenant's documentary evidence. The Landlord noted that the report indicates a finding of "moisture and fungus only" and makes no reference to black mould.

The Tenant stated that she did not provide a copy to the Landlord until after she moved out of the rental unit.

Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

Regarding the Tenant's application for double the security deposit

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Section 38(2) of the Act provides that Section 38(1) of the Act does not apply if the tenant's right to claim against the security deposit is extinguished because the tenant fails to participate in a start-of-tenancy or end-of-tenancy inspection. Based on the testimony of both parties, I find that the Tenant failed to participate in the end-of-tenancy inspection and therefore has extinguished her right to claim against the security deposit. Therefore, the Tenant's application for a monetary award pursuant to Section 38(6) of the Act is dismissed.

Regarding the Tenant's application for compensation for damage or loss

The Tenant did not dispute that she signed off the Visual Inspection Reports dated November 3, 2010, February 11, 2011, and May 18, 2011. The Inspection Report dated November 3, 2010, identified, among other issues, that the gutters were overflowing and the "bathrm 1 shower extention" was leaking. These are two possible reasons for moisture concerns in the rental unit, however I accept the Landlord's agent's testimony and documentary evidence (a copy of the November 10, 2011 invoice in the amount of \$237.44) that the repairs were completed by November 10, 2010. The visual inspection of February, 2011, indicated no concerns and the Tenant signed off on the inspection report.

The Tenant provided insufficient evidence that she advised the Landlord about her concerns regarding mould in the rental unit. She acknowledged that she did not give the Landlord written notification of her concerns.

I am satisfied that the Landlord complied with the provisions of Section 32 of the Act regarding its obligations to repair and maintain the rental property, as evidenced by the

quarterly visual inspections and the Landlord's speedy response to concerns raised on those inspections.

The onus is on the applicant to prove her claim on the civil standard, the balance of probabilities. I find that the Tenant did not provide sufficient evidence to prove her claim and therefore I dismiss the Tenant's claim in its entirety.

Conclusion

The Tenant's application is dismissed 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: December 23, 2011.

Residential Tenancy Branch