



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was originally conducted via teleconference on May 14, 2012 and was attended by both parties. The tenant requested an adjournment of that hearing and with no objection from the landlord the hearing was set to be reconvened on June 5, 2012 via teleconference. The second hearing was also attended by both parties.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for money owed or compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on May 12, 2010 for a 1 year fixed term tenancy beginning on June 1, 2010 that converted to a month to month tenancy on June 2011 for the monthly rent of \$975.00 due on the 1st of each month with a security deposit of \$487.50 paid on May 12, 2010. The tenancy ended on November 30, 2011.

The landlord submits that because the tenant had a washer and dryer stored against the north wall of the rental unit with boxes stacked to the ceiling she caused mould to develop in the rental unit. The landlord also submits that as a result of this and in combination with the tenant's act of using the rental unit for "storage" and because of the clutter in the rental unit the landlord was not able to re-rent the unit. The landlord seeks compensation in the amount of \$997.42 for lost rent.

The parties agree the tenant advised the landlord on November 1, 2011 that she had discovered what appeared to be mould on the north wall of the rental unit after she had moved a sideboard away from the wall while she was preparing to move. The landlord provided a copy of a letter from the landlord to the tenant dated November 2, 2011

stating that because of the mould the landlord would not be able to re-rent the unit for the following month.

The landlord hired an environmental consultant who entered the unit on November 17, 2011 and completed an inspection of the unit. The inspection resulted in a report that made the following recommendations:

1. Carpeting immediately adjacent to the north wall should be thoroughly cleaned with a carpet cleaner, followed by High Efficiency Particle Air (HEPA) filter equipped vacuum or removed; and
2. The north and west walls in the dining room and the adjacent window should be thoroughly cleaned with a HEPA vacuum, washed with soap and water, dried and then re-cleaned with a HEPA vacuum.

The report also stated the inspector could not determine the moisture source, after his visual only inspection. As such, mould may have grown due to materials stored on and around the washer and dryer against the wall. The landlord confirmed the inspector did not interview the tenant at any time and the inspector provided no comment in regard to the sideboard that had been the first location of mould sighting.

The tenant testified that the boxes in the photograph used in the inspector's report shows boxes that she had packed for moving out of the rental unit and that while she did from time to time have her daughter's art supplies on the washer and dryer there was not usually anything stored on top of these appliances.

The landlord testified that based on the recommendations of the report they painted the rental unit and removed all carpets and refinished the existing hardwood flooring. The landlord seeks the following compensation for this work as follows:

Description	Amount
Suite cleaning for painting	\$89.60
Suite Painting	\$153.87
Suite Painting – entire suite	\$3,428.58
Environmental Report	\$289.63
Carpet Removal	\$130.00
Floor Replacement	\$2,986.37
Total for mould repairs	\$7,078.05

When asked specifically as to why the landlord painted the rental unit despite the recommendation of the environmental report to only clean the walls and why the landlord removed the carpet and refinished the flooring instead of completing the cleaning that was recommended as an option, the landlord testified that they did so as a preventative measure to protect the next tenant.

The landlord also seeks additional compensation for cleaning kitchen cupboards (\$60.76); windows sills (\$34.72); a light fixture (\$22.40); the cost of linoleum (\$122.36) and installation (\$83.33) for the bathroom floor. The landlord has provided photographic evidence of the condition of these areas; as has the tenant.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The landlord's environmental report states "due to the lack of evidence of a moisture source inside the wall cavity, it the fungal growth identified may have been caused by the materials stored on and around the washer and dryer against the wall, rather than from water ingress from outside."

The report states that the growth **may** have been caused, not that it **was** caused. Further, I find the inspector did not conduct a thorough enough inspection to assign responsibility of the cause. For example, the inspector only conducted a visual inspection of the exterior of the north wall and that inspection was obscured by a raised planter box that covered the wall.

For an area of wall that would be constantly watered to care for plants, I find, based on the balance of probabilities, that had the inspector removed all of the dirt content of the planter box there may have been found a breach in the waterproofing. Further, failure of the inspector to interview the tenant, who occupied the unit at the time, fails to take into account, when assessing blame, other conditions that may give rise to a higher moisture content in the rental unit.

As such, I find the landlord's environmental report fails to establish the tenant caused the landlord to suffer a loss related to the tenancy. Even if I were to find the landlord had established the mould was caused by the tenant, the environmental report recommends only cleaning of the walls and an option for only cleaning carpets. As such the report did not require the landlord to paint the entire rental unit nor replace the flooring. I dismiss this portion of the landlord's claim, including the cost of the environmental report.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

From the photographic evidence submitted by both parties I find, with the exception of a ceiling fan, the landlord has failed to establish that the tenant failed to comply with her obligations under Section 37. I acknowledge the ceiling fan had some dust on it, the landlord has charged \$22.40 for cleaning the fan based on her rate of \$30.00 per hour.

In relation to the landlord's claim for replacement flooring in the bathroom, from the move in Condition Inspection Report and the photographs provided by both parties, I find the landlord has established that the floors in the bathroom have been damaged during this tenancy.

Despite the tenant's claim that this damage was caused due to high humidity in the rental unit, I find that her action of covering the flooring in the rental unit with peel and stick tiles (although I accept that she did not "stick" the tiles down) may have contributed to the condition of the bathroom flooring and she is therefore responsible to compensate the landlord for the costs of repairs.

While the landlord has submitted bills for flooring costs to replace the vinyl in both the kitchen and the bathroom totaling \$367.80 for the product and \$250.00 for the installation the landlord claims only \$122.36 for product and \$83.33 for installation. I accept these as reasonable, calculations regarding the costs for the bathroom only.

As to the landlord's claim for rent for the month of December 2011 the landlord states they could not rent the unit because the suite was used for storage; the clutter; and the mould. From the landlord's testimony they did not even attempt to re-rent the unit from November 2, 2012 and that they even indicated they were not going to try in their letter of November 2, 2012.

As I have found the landlord has failed to provide sufficient evidence to conclusively assign blame to the tenant for causing mould, I find the landlord has failed to establish that the tenant is responsible for not being able to re-rent the unit due to mould.

In relation to the landlord's claim the landlord submits that they could not re-rent the unit because the tenant was using the rental unit as storage, because, as the landlord states in her written submission "...perspective tenants were turned off by not being able to walk the suite, envision their furniture layout and obtain a feel for the space. The use of living areas of the suite as storage rendered the suite un-rentable".

I find since the landlord sent a letter to the tenant on November 2, 2012 stating that they wouldn't even show the unit because of the mould and the landlord testified that they did not show the rental unit to any potential tenants during the period after the tenant gave her notice and the end of the tenancy, they cannot claim now that they were not able to rent the unit because perspective tenants were turned off – the landlord did not have any perspective tenants.

I find the same applies to the landlord's claim that they could not rent the unit because of the clutter. I therefore find the landlord has failed to establish that the tenant prevented the landlord from being able to re-rent the unit and as a result the landlord has not suffered a loss resulting from a violation of the *Act*, regulation or tenancy agreement. I dismiss this portion of the landlord's claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I find the landlord had been provided with a forwarding address for the tenant in writing in the Condition Inspection Report that was dated and signed by the tenant on November 30, 2011. I note the landlord filed her Application for Dispute Resolution on March 12, 2012. As such, I find the landlord has failed to comply with Section 38(1) and therefore the tenant is entitled to return of double the security deposit, less the amounts I have determined the landlord is entitled above.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$228.09** comprised of \$22.40 cleaning; \$122.36 vinyl bathroom flooring; \$83.33 bathroom floor installation. As the landlord was largely unsuccessful in this claim I dismiss their request to recover the \$50.00 fee paid from the tenant for this application.

I order the landlord must deduct this amount from double the amount of the security deposit in the amount of \$975.00 in satisfaction of this claim, with the balance owed to the tenant. I grant a monetary order to the tenant in the amount of **\$746.91**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 11, 2012.

Residential Tenancy Branch