



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to return double the security deposit; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover double the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on June 01, 2012 however the tenant was able to move into the rental unit on May 26, 2012. Rent for this unit was agreed at \$850.00 per month and was due on the first day of each month in advance.

The tenant testifies that she paid the sum of \$320.00 to the landlord before she moved into the rental unit. The tenant testifies that she thought this sum was for a security deposit. The tenant seeks to double the security deposit returned to her as the landlord did not return it within 15 days of receiving the tenants forwarding address.

The landlord testifies that this sum paid was not a security deposit and the tenant had been informed at the start of the tenancy that this sum of \$320.00 was a deposit for the application and is not a security deposit. The landlord testifies that a security deposit for this unit would have been \$425.00 and is due within 30 days of the start of the tenancy. The landlord has provided the receipt for this payment and the rent ledger which both shows this was documented as an application deposit. The landlord testifies that all tenants are made aware of this and are informed that it is held by the landlord until the tenant moves into a unit and is deducted from a tenants first month's rent.

The tenant testifies that after she moved into the rental unit on May 26, 2012, the tenant could smell a strong odour in the unit. The tenant states she put incense and air fresheners out to try to mask the smell however the smell became so bad it started to make the tenant ill.

The tenant testifies that she notified the landlord about this smell on May 26, 2012 when the landlord was supposed to come and do some work in the unit. The tenant testifies that the landlord told the tenant that he had had the carpets cleaned twice in the unit.

The tenant testifies that the assistant manager came to the tenants unit and informed the tenant that she could smell a faint smell and that the tenant should air the unit out. The tenant testifies that the landlord came to the unit and told the tenant he could not smell anything and he refused to take the carpets out. The tenant testifies that the assistant manager came back a second time after the landlord had spoken with her and informed the tenant that she could not smell anything. The tenant testifies that the assistant manager advised the tenant to put vinegar out to get rid of any smells.

The tenant testifies that the next day she went to work but felt so ill she had to leave work to go to the doctors. The tenant testifies that the doctor, while examining the tenant, said she could smell something on the tenant's cloths and that it smelt toxic. The tenant testifies that she did not go home but went to her brothers where she striped off her clothes and showered while her brother washed her clothes to get rid of the smell. The tenant testifies that the smell was like a bad urine smell in the carpet. The tenant testifies as this smell was making her so sick she signed a mutual agreement with the landlord to end the tenancy on June 01, 2012 at 7.00 p.m.

The tenant seeks to recover costs associated with having to move in and out of this unit and costs to move into a new unit to the sum of \$1,500.00;

The tenant also seeks storage costs paid to store her belongings while she found a new unit to the sum of \$164.64.

The tenant seeks laundry costs to clean her clothes at the laundry matt and at her brother's home at a sum of \$22.00

The tenant seeks to recover rent paid to a friend who's house she stayed at while looking for another home to the sum of \$400.00;

The tenant now seeks to recover the rent she paid to the landlord as she now realizes it was rent and not a security deposit to a sum of \$320.00.

The tenant has provided receipts for these costs in evidence.

The landlord testifies that he told the tenant that he could not smell anything on the carpets. The landlord disputes the tenants claim that the carpet had an offensive odour. The landlord states that the tenant and the tenant's witnesses have a perception of a smell when there was no smell from the carpets. The landlord testifies that he has stayed at the rental unit and slept on the carpets while doing work in the building before the tenant moved in. The landlord testifies that he did not experience an odour in the carpets. The landlord testifies that the carpets had been cleaned twice and the new tenant who is due to move into the unit on September 01, 2012 did not complain about an odour in the carpets when he viewed the unit. The landlord testifies that his assistant told the tenant to put vinegar out to pacify the tenant.

The tenant calls her first witness LP. This witness testifies that there was a smell in the tenants unit and that the tenant did tell the landlord about the smell numerous times. The witness testifies that she was on the phone to the tenant when the landlord came round and the witness heard the last 10 minutes of the conversation between the landlord and tenant. The witness testifies that the landlord told the tenant that she was that kind of a person and was yelling at the tenant. The witness testifies that she drives a bus and picked the tenant up early one morning. The witness testifies that the tenant told the witness the tenant had to leave her unit because she could not stand the smell. The witness testifies that the tenant came and slept on the witnesses couch for a month after the tenant left her unit and the witness helped the tenant pack up her unit.

The landlord cross examines the witness and asks the witness if she knew the tenant had the ability to pay the rent. The witness replies that she knows the tenant had rent money as the tenant paid the witness rent after the tenant left her unit.

The tenant calls her witness TP. This witness is the tenant's brother and testifies that the tenant brought him to her unit when she was moving in and when they opened the door there was a bad odour. The witness testifies that they sat on the carpet and he noticed stains on the carpet. The witness states that in his opinion the carpet had mildew, wet carpet smell like a urine smell. The witness testifies that even the mover's commented on the smell when they brought the tenants furniture in. The witness testifies that the tenant called the fire service as she thought the smell may be a chemical smell but when the fireman came they also thought the smell was a pet urine smell and advised the tenant to move out.

The witness testifies that the smell from the unit caused the tenant to become sick. The witness testifies that the smell was all over the tenants clothes and the witness states he washed the tenant's clothes for her when the tenant came to see him.

The landlord declines to cross examine this witness.

The tenant calls her witness CC. The witness testifies that she is employed as a resident manager at another building and when she visited the tenant at the tenants unit there was a bad odour coming from the tenant's carpets. The witness states that she thinks the carpets had not been cleaned properly. The tenant asks her witness if she has ever smelt a smell like that before. The witness replies that she has in units with unclean carpets as cleaners use chemicals with good smells.

The landlord cross examines this witness and asks the witness if she said the carpets had not been cleaned properly and was there a heavy smell. The witness replies yes she did think that and the smell was coming from the carpets.

The landlord calls his witness JR who is the assistant manager. The witness testifies that she could smell the carpet, an odour such as Odour Eaters and the tenant's furniture. The witness testifies that she asked the tenant what the tenant could smell but the tenant could not describe it.

The tenant cross examines the witness and asks the witness if she came to the tenants unit and did the tenant ask the witness if someone had died in the unit. The witness replies that she did go to the unit and informed the tenant that no one had died. The witness testifies that she did advise the tenant to put vinegar out as it would help get rid of any smell. The tenant asks the witness what she could smell when the witness came to the tenants unit with the landlord. The witness testifies she could smell carpet cleaner, furniture and fabrics and that the carpets had just been cleaned.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. In this matter of whether or not the tenants unit had an odor that was sufficient to make the tenant ill; I find the tenants evidence and the testimony of the tenant's witnesses in this matter more compelling that there was a bad odor in the carpets of an undetermined nature. I further find from the tenants documentary evidence in the form of a letter from the tenants doctor that this smell was on the tenants clothes and had made

the tenant ill. Consequently I refer the parties to s. 32 of the Residential Tenancy Act which states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Although the landlord has testified that he could not smell an odor in the tenants unit and the carpets had been cleaned twice the landlord has provided no evidence to support this claim. If the landlord could not smell the odor that at least four other people have testified that they could smell it does not necessarily mean that the odor was not there. I agree that some peoples tolerance to odors is more acute then other peoples however when this smell is evident to a tenant and to at least three visitors to the unit along with the tenants doctor who could smell an odor on the tenants clothes I find on a balance of probability that the landlord has not complied with s. 32 (1) of the Act in ensuring the rental unit was fit for occupation by ensuring the carpets were clean and free from any odors that could affect a tenants ability to live in the rental unit.

I further find that the landlord and tenant signed a mutual agreement to end tenancy on May 31, 2012 effective on June 01, 2012. In doing so the parties have agreed that the tenancy will end. This also ends the tenant's obligation to the landlord to pay rent for June, 2012. Consequently, the application deposit taken by the landlord of **\$320.00** must be returned to the tenant.

With regard to the tenants claim for money owed or compensation for damage or loss; I find as the rental unit was not fit for occupation that the tenant is entitled to recover her moving costs both in and out of the unit to a sum of **\$1,000.00**. However the tenants claim for further moving costs to move her belongings out of storage and to a new rental unit are dismissed without leave to reapply as this is no longer the landlords responsibility.

With regard to the tenants claim to recover storage costs; I find had the rental unit been satisfactory for the tenant to be able to reside in then tenant would not have incurred storage costs for her belongings while the tenant looked for alternative accommodation. Consequently I uphold the tenants claim to recover the sum of **\$164.64**.

With regard to the tenants claim for laundry costs; I find the tenants claim is upheld as the tenant incurred additional costs to attempt to remove the smell from her unit from her clothes. Consequently I find the tenant is entitled to recover the sum of **\$22.00** from the landlord.

With regard to the tenants claim to recover the sum of \$400.00 in rent paid to her friend to stay in the friends unit while looking for alternative accommodation; as the tenant did not pay rent for this unit then the tenant would have to expect to pay rent elsewhere. Consequently I find the tenant has not incurred a loss for paying rent for June to her friend and this section of the tenants claim is dismissed.

With regard to the tenants claim to recover double her security deposit; the tenant agrees that she did not pay a security deposit and the sum paid was for rent for June, 2012 held as an application deposit. Consequently this section of the tenants claim is dismissed without leave to reapply.

As the tenant has been partially successful with her claim I find the tenant is entitled to recover the \$50.00 filing fee from the landlord. A Monetary Order has been issued to the tenant pursuant to s. 67 and 72(1) of the Act for the following amount:

Recover rent paid	\$320.00
Moving costs	\$1,000.00
Storage costs	\$164.64
Laundry costs	\$22.00
Filing fee	\$50.00

Total amount due to the tenant	\$1,556.64
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Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,556.64**. The order must be served on the respondent and is enforceable through the Provincial Court 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: August 28, 2012.

Residential Tenancy Branch