



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation in the amount of \$7,545.00, for the loss of personal property, for damage to personal property, for moving costs, for pain and suffering and for the return of double the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Was the landlord negligent with regard to responding to the tenant's complaints of mould in the rental unit? Is the tenant entitled to compensation and the return of double the security deposit?

Background and Evidence

The tenancy started on July 14, 2008 and ended on July 31, 2012. The monthly rent was \$800.00 due on the first of each month. Prior to moving in, the tenant paid a security deposit of \$400.00.

Both parties agreed to the following sequence of events. The tenant needed a larger rental unit to accommodate her grown children. On April 01, 2012, the tenant gave notice to end the tenancy effective May 31, 2012. The tenant was unable to find a suitable rental unit and therefore on May 05, 2012, she withdrew her notice to end tenancy. The landlord agreed to allow the tenancy to continue.

On July 08, 2012, the tenant noticed mould in the rental unit and informed the property manager. The property manager responded immediately and visited the unit for an inspection. During the inspection, he determined that the presence of mould was insignificant and contacted the owner of the unit for further action. On July 12, 2012, the tenant gave notice to end the tenancy effective July 31, 2012.

The tenant stated that the mould affected her health and that of her children. She also reported a leak in one of the bedrooms after a rain storm on July 20, 2012. The tenant stated that there were mould spores in the air inside the rental unit and they destroyed her couch, bed, sheets, and children's clothing. The tenant is claiming \$750.00 for damage to these items.

The tenant also stated that due to health problems brought on by the mould, she had to move immediately and was claiming the cost of moving in the amount of \$200.00. The tenant is also claiming \$435.00 for the damage deposit at the new rental unit, \$120.00 for utility hookups and \$5,240.00 for pain and suffering.

The tenant moved out on July 31, 2012 and gave the landlord her forwarding address that day. The landlord did not return the security deposit because the tenant had not provided adequate notice to end the tenancy. The landlord did not make application for dispute resolution to keep the security deposit. The tenant is claiming the return of double the security deposit.

Analysis

During the hearing, I informed the landlord that even though he had received inadequate notice to end the tenancy, he was bound by Section 38 of the *Residential Tenancy Act* which deals with the return of the security deposit.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The tenant understood that by giving notice to end the tenancy on July 12, 2012, the earliest she could end the tenancy was August 31, 2012. The parties discussed the issues of the return of double the security deposit and inadequate notice to end tenancy and came to an agreement. The tenant agreed to withdraw her claim for the return of double the security deposit and the landlord agreed not to file an application for loss of income due to the inadequate notice given by the tenant, to end the tenancy.

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In deciding whether the tenant is entitled to compensation and if so in what amount, I take into consideration the following factors:

- The tenant occupied the rental unit without problem since July 2008
- The tenant withdrew her first notice to end tenancy on May 05, 2012, and continued to occupy the rental unit without complaint.
- The first sign of mould was detected by the tenant and reported to the landlord on July 08, 2012
- The property manager inspected the unit immediately upon receiving a complaint from the tenant
- Four days later on July 12, 2012, the tenant gave notice to end the tenancy and moved out on July 31, 2012.

Based on the above, I find that it was the tenant's intention to move to a larger rental unit to accommodate her grown children. Her initial attempt was unsuccessful and therefore when one became available, she decided to rent it immediately for fear of losing the opportunity. Accordingly, she gave the landlord inadequate notice to end the tenancy.

Even if I find that mould was an issue, the tenant did not give the landlord adequate time to resolve the problem and gave notice to end tenancy within four days of her complaint. I further find that the tenant lived in the unit for more than four years without any problem and therefore on a balance of probabilities, I find that it is more likely than not that the tenant moved out to take advantage of a bigger rental unit and not because of the alleged problem of mould. I also find that the landlord acted responsibly by responding to the tenant's complaint in a timely manner.

For the above reasons, the tenant's claim for compensation is dismissed.

Conclusion

The tenant withdrew her claim for the return of double the security deposit. The landlord agreed not to make claims against the tenant for loss of income. The tenant's claim for compensation is dismissed.

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: November 15, 2012.

Residential Tenancy Branch

