



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MND, MNSD, CNC, RP, SS, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for cleaning and repairs, and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for the return of double the security deposit, for compensation for loss under the *Act*, for the cost of moving and storage and for the recovery of the filing fee.

The tenant has also applied to cancel a notice to end tenancy, for an order directing the landlord to carry out repairs and serve documents in a different way. At the outset of the hearing it was determined that the since the tenancy was over and the relevant documents were served as required by the *Act*, these portions of the tenant's application were moot and accordingly dismissed.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for cleaning, repairs and the filing fee? Is the tenant entitled to the return of double her security deposit, to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on August 01, 2012. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs. The tenancy ended on April 30, 2013. The monthly rent was \$600.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$300.00.

The landlord stated that during the tenancy, he left home on January 03, 2013 for three days. At the time he left home, the tenant was using the laundry machine. Upon his return, he stated that he found the machine broken. The tenant denied having broken the machine and stated that the breakdown may have been due to frozen pipes. The landlord filed information regarding temperatures during that period of time. The information indicates that freezing temperatures did occur on that day. The laundry machine is located in an outdoor room built under the deck.

The landlord stated that the rental unit smelled of marijuana and upon confronting the tenant, she denied the use of marijuana. The landlord stated that due to the activities of the tenant, he felt the need to upgrade the security system of the home by adding cameras. The landlord installed cameras and is claiming the cost of doing so.

The tenant stated that she moved out because the rental unit was not properly heated, was mouldy and that the landlord entered the unit without proper notice. The tenant stated that she noticed the mould on March 07 and informed the landlord that same day. On March 08, the landlord conducted an inspection. He ripped out a wall in the bedroom to check for mould and found none. The landlord stated that he provided proper notice prior to entering the rental unit and filed copies of the notices.

The tenant agreed that she did not clean the unit prior to moving out. She stated that since she was pregnant with twins, she hired help to clean, pack and move her belongings. The tenant also stated that she had to dump a mouldy mattress and purchase a new one to replace it.

The tenant stated that on April 02, 2013, she mailed a registered letter to the landlord with her forwarding address and a request for the return of the security deposit. The landlord stated that he did not receive any registered mail. The tenant filed a copy of the receipt and tracking slip.

The landlord is claiming the following:

1.	Painting	\$1,776.00
2.	Replace wall	\$150.00
3.	Clean suite	\$500.00
4.	Photos	\$11.42
5.	Replace washing machine	\$445.76
6.	Upgrade home security	\$568.84
7.	Filing fee	\$50.00
	Total	\$3,502.02

The landlord also added a claim for compensation for stress and sickness suffered by himself and his girlfriend and for the strain the situation placed on their relationship. The landlord did not enter a monetary amount against these additional claims, but simply rounded off his total claim to \$5,000.00. Since the landlord did not provide adequate information regarding the quantum of his claim for compensation, it is dismissed.

The tenant applied for the following:

1.	Return of rent for December to April 2013	\$3,000.00
2.	Clean and pack	\$1,620.00
3.	Double security deposit	\$600.00
4.	UHaul to and from storage	\$265.14
5.	Movers to and from storage	\$1,200.00
6.	Public Storage	160.16
7.	Gas and dump fee	\$70.00
8.	New Mattress purchase	\$500.00
9.	Cost of laundry	\$150.00
10.	Mailing costs/Cost of photos/serving papers	\$112.37
11.	Representing costs	\$500.00
12.	Pain and suffering for brother	\$500.00
13.	Wage loss	\$5,800.00
14.	Filing fee	\$100.00
	Total	\$14,577.67

The tenant also made a claim for interest on money owed and for compensation for stress and sickness due to mould. The tenant did not indicate a monetary value for this portion of her claim. She simply rounded the amount of her claim to \$15, 000.00. Since the tenant did not provide information regarding the quantum of her claim for interest, stress and sickness, I dismiss this portion of her application.

Analysis

Landlord's application:

1. Painting - \$1,776.00

The landlord stated that the unit was painted on or about January 2011. He filed photographs to show the condition of the walls at the end of tenancy. He stated that he was painting the unit himself and that the job was half done at the time of the hearing. The landlord filed a quotation in the amount of \$1,776.00.

Since the landlord has not completed the work and therefore is not in a position to file receipts for actual costs, I dismiss this portion of the landlord's application with leave to reapply.

2. Replace wall - \$150.00

The landlord stated that he removed a wall to check for mould and is claiming the cost of replacing the wall. Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant. Removal of a wall to check for the presence of mould is the landlord's responsibility and therefore his claim for \$150.00 to replace the wall is dismissed.

3. Clean suite - \$500.00

The landlord filed photographs of the unit as left by the tenant. The tenant agreed that she did not clean the unit. Therefore I find that the landlord is entitled to his claim of \$500.00 for cleaning.

4. Photographs - \$11.42

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim for the cost of photographs is dismissed.

5. Replace washing machine - \$568.84

Based on the testimony of both parties and the information regarding the temperature on January 03, 2013, I am unable to determine whether the machine broke down due to negligence on the part of the tenant or due to the freezing temperatures at that time. Therefore the landlord's claim is dismissed.

6. Upgrade home security - \$568.84

The landlord has applied to be compensated for the cost of a home security camera package. The landlord is at liberty to install security systems, but the tenant is not responsible for the cost of doing so. Accordingly the landlord's claim is dismissed.

7. Filing fee - \$50.00

The landlord has not proven the majority of his case and therefore must bear the cost of filing his application.

Overall the landlord has established a claim for \$500.00 for the cost of cleaning.

Tenant's application:

1. Return of rent for December 2012 to April 2013 - \$3,000.00

The tenant stated that the reasons for moving out were the presence of mould, no proper heat and the landlord entering the unit without notice. Based on the testimony of the tenant, she informed the landlord about the mould on March 07 and moved out on March 15. The landlord inspected the unit on March 08. The tenant agreed that she did not inform the landlord in writing about the lack of proper hearing. The landlord stated that he provided notice prior to entry and filed copies of the notices.

Based on the above, I find that tenant has not proven her claim that the landlord did not act on her complaint of mould in a timely manner. The tenant has not proven negligence on the part of the landlord and therefore her application for the return of rent is dismissed.

2. Clean and pack - \$1,620.00

The tenant stated that due to the fact that she was pregnant with twins at the time of the move, she was unable to clean the unit or pack her belongings. She stated that the landlord was responsible for the cost of the move because of the living conditions as mentioned above, which resulted in the need to move out.

Also as mentioned above, I find that the landlord was not negligent and on February 13, 2013, the tenant signed a mutual agreement to move out on April 30, 2013. Therefore I find that the tenant is responsible for the cost of her move. The tenant stated that she did not clean the rental unit and therefore her claim for the cost of cleaning is dismissed.

3. Double security deposit - \$600.00

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 the tenant and in the absence of any contradictory evidence, 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 landlord currently holds a security deposit of \$300.00 and is obligated under section 38 to return double this amount. Therefore the tenant is entitled to \$600.00.

4. U-Haul to and from storage - \$265.14
5. Movers to and from storage - \$1,200.00
6. Public Storage - \$160.16

On February 13, 2013, the tenant entered into a mutual agreement with the landlord to end the tenancy effective April 30, 2013. Therefore the tenant is responsible for the cost of moving and storage and accordingly her claim for these three items is dismissed.

7. Gas and dump fee - \$70.00
8. New mattress purchase - \$500.00
9. Cost of laundry - \$150.00

The tenant stated that due to the presence of mould in the rental unit she had to get rid of her mattress by dumping it. In addition, due to the mould she had to have all her clothes laundered. The tenant is claiming the cost of these items. Based on the testimony of both parties, I find that the landlord responded to the tenant's complaint of March 07, 2013, on the next day. The tenant moved out shortly after on March 15, 2013.

I find that the landlord is not responsible for the cost of a new mattress for dumping the old one or laundering the tenant's clothes, because the tenant did not give the landlord enough opportunity to resolve the issue. In addition the tenant did not provide proof of purchase or of the cost to launder clothes. Accordingly the tenant's claim is dismissed.

10. Mailing costs/cost of photos/serving papers - \$112.37
11. Representing costs - \$500.00

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the tenant's claim for the above items is dismissed.

12. Pain and suffering for brother - \$500.00

The tenant stated that her brother fell down the stairs due to inadequate lighting. The tenant plans to sue the landlord's insurance company. Therefore I dismiss this claim.

13. Wage loss - \$5,800.00

The tenant stated that due to the stress associated with the tenancy, her doctor advised her to stop working for fear of miscarrying her babies.

The tenant testified that she lost \$5,800.00 in wages due to not working but did not provide adequate evidence to support this claim. Therefore this claim is dismissed.

14. Filing fee - \$100.00

The tenant has not proven the majority of her case and therefore must bear the cost of filing her application.

Overall the tenant has established a claim of \$600.00 while the landlord has established a claim of \$500.00.

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$100.00 which consists of the difference in the established entitlements of both parties. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$100.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$100.00.

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: July 30, 2013

Residential Tenancy Branch

