



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OPB, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The hearing was conducted by conference call. The landlord called in and participated in the hearing and the tenant's husband called in with his translator and participated in the hearing. The tenant submitted a letter before the hearing to advise that she would be out of the country on the day of the hearing, but her husband would represent her at the hearing and her friend would attend to act as translator

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss of rental income?

Is the tenant entitled to the return of her security deposit?

Is the tenant entitled to any other monetary award and if so in what amount?

Background and Evidence

The rental unit is a house in Richmond. The tenancy began on September 1, 2013 for a one year fixed term with rent in the amount of \$2,200.00 payable on the first of each month. The tenant responded to an advertisement and viewed the house in July, 2013. She told the landlord that she intended to use the upper part of the house as the family home and the lower half would be used for an after school day care. According to the tenant the landlord said that he would clean the mould in the house before she moved in. The tenant paid a security deposit of \$1,100.00 on August 4, 2013 when the tenancy agreement was signed. After the tenant and her family moved into the rental unit she complained to the landlord about a mould problem in the lower portion of the house. The complaints began on September 4, 2013 when the tenant proposed in the letter that the landlord immediately perform what was described as replacement and repainting or the tenant would find people to do it: "right now". The tenant suggested as an alternative that the agreement be terminated and that the landlord return all the

money she paid to him. The tenant's representative testified that the landlord's agent promised that the landlord would deal with the mould problem. The tenant's representative said that they spent three days cleaning the house and paid \$200.00 for house cleaning. He testified that the landlord sent someone to the house without any notice to the tenants and the tenant called 911 to report the unauthorized entry. According to the tenant's statement, the person inspecting the house told the tenant's son that: "all it needed was a little paint".

On September 10th the tenant sent a further letter to the landlord. She reiterated her complaints about the mould and the health effects she said it was causing. She said that she would have the City's Health Department perform an inspection and the landlord would be: "responsible for the resulting consequences concerning the compliance with City Hall's new inspection results all the costs that incurred to you." (reproduced as written). She proposed as "Option two" that: "We terminate the residential tenancy agreement between you and us at the end of this September 30, 2013 and we move out of your house and you return to us the security deposit and all rent checks that we gave them to you."

The tenant submitted a letter from her family doctor dated January 11, 2014. He reported that on September 12, 2013, the tenant came to see him complaining of an itchy rash all over her body and limbs. She reported that she developed the rash within 2 weeks of moving into the rental unit. He stated that the tenant has had a rash problem in the past, usually triggered by environmental factors including insects and air pollutants. He said that he believed the mould could be the trigger and he advised the tenant to move out of the house: "asap" unless the problem was fixed by the landlord. He also reported that the tenant's husband, who had an asthma problem, was getting short of breath since moving into the house.

The tenant gave the landlord a written notice dated September 20, 2013 informing him that she would move out of the rental unit on September 30, 2013. She requested the return of the security deposit by check dated September 30 and she provided a forwarding address.

The tenant sent another letter requesting the return of her security deposit. The letter was dated October 30, 2013. In the letter she said that if she did not receive the security deposit before November 10th 2013 the landlord would be required to pay her double the original security deposit and she said she would file a dispute against him to pay the extra money.

The landlord submitted his application for dispute resolution on November 2, 2013; he claimed payment of the sum of \$2,200.00 as lost revenue for the month of October because of the tenant's short notice and breach of the fixed term tenancy agreement. The tenant filed her application for dispute resolution on January 14, 2014. She claimed the following amounts:

• House inspection Fee	\$118.00
• House clean fee	\$200.00
• Security Deposit	\$1,100.00
• Moving Fee	\$700.00
• Bank void cheque fee	\$137.50
• Family Doctor document fee	\$50.00
Total:	\$2,305.50

At the hearing the tenant's representative said that the tenant claimed double the amount of the security deposit because the landlord did not return the deposit or make a claim within 15 days of the end of the tenancy.

The tenant did not submit any receipt or invoices to support the amounts claimed above. The tenant's representative said that the persons who performed the house inspection, the cleaning and the moving were people who do not provide receipts.

The landlord referred to his e-mail communications with the tenant. He said that as soon as he heard from the tenant that she had an issue with mould he arranged to have someone inspect the house. The landlord said the tenant did not allow time for any work to be done. He testified that the tenant intended to use the lower half of the house as a daycare. He said someone from the city came to inspect the house for use as a daycare before the tenant signed the tenancy agreement. The landlord said that the tenant decided not to proceed with her daycare plans and that is the likely reason she decided to move out. The landlord testified that before the tenant moved he was living in the upstairs portion of the house and other tenants were occupying the lower portion. The landlord said he had no mould problems in the upstairs portion and he received no complaints from the previous tenants before the tenant moved in. The landlord testified that he was not able to re-rent the unit for the month of October and he claimed lost rent for the month of October.

Analysis

The tenant submitted photographs that were taken before she moved into the rental unit. The tenant's representative said that the photos showed that there was a serious mould problem that justified the tenants in moving out without giving proper notice. The tenant did not provide any pictures to show the actual condition of the rental unit after they moved in and after the cleaning that the tenant claimed to have performed. I find that the tenant has not shown on a balance of probabilities that there was a mould problem of such severity that it justified ending the fixed term tenancy with only 10 days notice to the landlord and without giving the landlord a reasonable opportunity to inspect the house and to implement remedial measures if required. I note that the landlord lived in the house without ill effects before the tenants moved. The absence of any pictures taken after the start of the tenancy to show the actual condition of the rental unit when the tenants occupied it leads me to consider the earlier pictures as inconclusive evidence of a serious mould problem; the inconclusive nature of the photographs coupled with the landlord's willingness to take steps to address the tenant's concerns causes me to find that the tenant was not justified in ending the tenancy without proper notice and without giving the landlord a reasonable opportunity to rectify the perceived problem. The tenant provided no receipts or invoices for any expenditures. She has not proved that the landlord is liable for any loss or expense she may have incurred and all claims by the tenant, save for the claim for the return of her security deposit are dismissed without leave to reapply.

With respect to the tenant's claim for the return of her security deposit, Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant provided the landlord with her forwarding address in writing on September 20, 2013. The tenancy ended on September 30, 2013 and the landlord was obliged to return the deposit or make a claim to keep it within 15 days after September 30th. The landlord did not commence his application for dispute resolution until November 2, 2013, well outside the required 15 day period.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6)

therefore applies. I grant the tenant's application and award her the sum of \$2,200.00. The remainder of the tenant's application is dismissed without leave to reapply. The tenant is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,250.00.

Turning to the landlord's claim, I have found that the tenant was not justified in ending this fixed term tenancy without giving proper notice and I find that the landlord is entitled to an award against the tenant as claimed for his loss of rental income for October in the amount of \$2,200.00. The landlord is entitled to recover the \$50.00 filing fee for his application for a total award of \$2,250.00.

Conclusion

Section 72(2) of the *Residential Tenancy Act* allows me to set off the award in favour of the tenant against the amount found to be due to the landlord. I order that the sum of \$2,250.00 awarded to the tenant be set off against the same amount that has been awarded to the landlord. The net effect of this setoff is that there is no amount now due to or by either party and the landlord will retain the tenant's security deposit in the amount of \$1,100.00. At the hearing I directed the landlord to return the tenant's post-dated rent cheques and he agreed to do so.

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: January 27, 2014

Residential Tenancy Branch

