



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord carries on business on May 28, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order if so how much?

Background and Evidence

The tenancy began on September 1, 2013 when the parties entered into a one year fixed term tenancy agreement. The tenancy agreement provided that the tenant(s) would pay rent of \$1100 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$550 at the start of the tenancy.

In late October or early November 2013 the tenant advised the landlord she was experiencing problems with mould in the rental unit. This is a significant problem as her son suffers from asthma. The landlord inspected the rental unit in November or December 2013. In April 2014 the landlord paid for the tenant to leave the rental unit for 2 days so that a renovation company

could complete work. During this process they discovered mould issues that needed further remediation.

The tenant agreed to leave the rental unit and was away from April 23, 2014 to May 7, 2014. The landlord testified the tenant was not asked to leave and the renovation company could work around them. The tenant testified the renovation company asked them to leave for that period. The tenant moved in with her grandmother who lives 26 kilometers away. She drove her son to school during this time period. Normally she would walk.

Law:

Section 32(1) and (5) of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

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.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Analysis

After carefully considering the disputed evidence I determined the tenant is entitled to compensation for the reduced value of the tenancy caused by the presence of mould the disruption caused by renovation company work to remove the mould. I do not accept the evidence of the landlord that it was not necessary for the tenant to vacate the rental unit during the 15 day period. In my view given the health issues of her son it would have been extremely dangerous for her to remain in the rental unit during the period as the work would cause the release of the mould. I accept the testimony of the tenant that the restoration company advised her that it would be appropriate for them to vacate the rental unit while the work was carried out.

Monetary Order and Cost of Filing fee

With regard to each of the tenant's claims I find as follows:

1. I determined the tenant is entitled to reimbursement of the sum of \$550 being one half of a month rent. The tenant reasonably left the rental unit during this period and did not receive value for the rent that she was paying.
2. The tenant claimed the sum of \$132.84 for the additional cost of gas spent during the two week period. She testified that all gas was for the purposes of taking her son to school or going to the grocery store which is a 52 kilometre return trip. The landlord pointed out that the receipt for \$50.01 was for gas purchased on March 25, 2014 which was for a period a month earlier than the period she was out of the house. I agree with the submission of the landlord this receipt does not assist the tenant and should be ignored. The landlord also pointed out that a second receipt in the sum of \$42.83 was for gas purchased in Ladysmith which is a distance away. The tenant had previously testified all of the gas was for the purpose of transporting her children or grocery shopping. This receipt should be reduced. The tenant had testified she would only spend \$10 in gas during a two week period. Later in her testimony she testified she would only fill up once a month which would result in an expenditure of \$25 for a two week period. However, in the circumstances I determined the tenant has established a claim of \$60 for additional gas expenses caused by the mould problem.
3. The tenant is a vegan and must purchase her food fresh. She claimed the sum of \$334 for the increase in food cost. She presented receipts to support this claim. She further testified that normally she would spend more money on food. I determined that to establish this claim the tenant has the burden of proof that the vacating of the rental unit for the two week period resulted in additional food expenses. The tenant failed to prove this claim. From her evidence it appears she spent less money on food than normal. As a result I dismissed the claim for the cost of additional food.
4. I determined the tenant is entitled to \$43.80 for the increase in hydro. I determined this claim to be reasonable in the circumstances and supported by the evidence presented.
5. I determined the tenant is entitled to \$200 for loss of enjoyment and the reduced value of the tenancy. The tenant experienced mould problems for an extended period of time.

The moving to her grandmother for the 2 week period caused a significant disruption to the tenant and her family including additional commute times and living in crowded conditions with her grandmother.

Summary:

I ordered the landlord(s) to pay to the tenant the sum of \$853.80 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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: September 09, 2014

Residential Tenancy Branch

