



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, RPP, FF

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / an order instructing the landlord to return the tenant's personal property / and recovery of the filing fee. The application was filed on September 12, 2014, and later amended on October 17, 2014.

The tenant attended and gave affirmed testimony. The tenant testified that the application for dispute resolution and notice of hearing was served by registered mail. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered" on September 16, 2014. Despite this, the landlord did not appear.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on March 01, 2014. Monthly rent was \$650.00 and a security deposit of \$325.00 was collected. There is no move-in condition inspection report in evidence.

It appears that the parties reached a mutual agreement, pursuant to which tenancy would end in late August or early September 2014. The tenant testified that the last night she stayed in the unit was on or about August 27, 2014, and that all of her possessions had been removed from the unit by September 15, 2014. There is no move-out condition inspection report in evidence.

The tenant testified that she provided the landlord with her forwarding address in writing on September 15, 2014, and requested the return of her security deposit. To date, however, no portion of her security deposit has been returned.

In summary, the tenant claims she discovered mould in the unit towards the end of August 2014, and found that it had damaged some of her possessions. After bringing the matter to the landlord's attention at that time, she concluded that the landlord was not likely to address the problem. The tenant then began to vacate the unit.

Evidence submitted by the tenant includes a letter dated September 17, 2014 which is written by an environmental health officer from the local government authority. In the letter, the environmental health officer confirms that an inspection of the unit was done on September 15, 2014. Further, in her letter the environmental health officer noted, in part, as follows:

A visual examination shows what appears to be the presence of mould on some of the building surfaces. The mould may have penetrated the building materials and if so, cannot be effectively washed off.

The following items were noted:

- Black growth was observed on the bottom left corner in the closet

Although the presence of mould does not necessarily indicate a health hazard, some species can potentially cause harm to humans. Unfortunately, identification of the mould species involved is of limited use, since it ultimately won't solve the underlying problem.

Excessive moisture is the primary cause of mould growth, so any remediation efforts must focus on preventing moisture build-up and controlling humidity. This may include the repair of leaking roofs and pipes and / or the provision of adequate air ventilation. If complete mould removal is desired, the only effective solution is to implement preventative measures aimed at moisture control and to remove all mould damaged materials.

Analysis

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 44 of the Act addresses **How a tenancy ends**, in part:

44(1) A tenancy ends only if one or more of the following applies:

(e) the tenancy agreement is frustrated;

Residential Tenancy Policy Guideline # 34 speaks to “Frustration,” in part:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

Based on the affirmed / undisputed testimony of the tenant, in addition to the documentary evidence, which includes but is not limited to, a considerable number of

photographs and text messages exchanged between the parties, the various aspects of the tenant's claim and my findings around each are set out below.

\$222.70: painting within the unit near the start of tenancy

The tenant testified that she entered into a verbal agreement with the landlord, pursuant to which the landlord would reimburse her for costs incurred as a result of painting within the unit. However, in the absence of any conclusive documentary evidence of such an agreement, this aspect of the application must be dismissed.

\$650.00: reimbursement of rent for September 2014
\$155.74: (\$68.45 + \$87.29) storage containers
\$207.00: storage of possessions
\$295.82: (\$157.57 + \$138.25) clothes laundry
\$54.55: post office fee for change of address / forwarding of mail
\$1,536.00: lost wages

There is no evidence of a written agreement bearing the signature of either party with regard to reimbursement of September's rent. Further, I find there is insufficient evidence that the condition of the unit failed to comply with the "health, safety and housing standards required by law." I also find there is insufficient evidence that the tenant notified the landlord of any concerns regarding moisture in the unit, heating in the unit, or mould in the unit, and then provided the landlord with sufficient opportunity to properly address these concerns prior to ending the tenancy. Additionally, I find there is insufficient evidence that the discovery of mould in the unit meets the threshold of establishing that the tenancy was frustrated. Following from all the foregoing, I find that these aspects of the tenant's application must be dismissed.

\$200.00: replacement of purse
\$799.00: replacement of bedding

The tenant testified that these costs have not been incurred and that the amounts claimed are estimates. For this reason and for the reasons set out immediately above, these aspects of the application are hereby dismissed.

***\$650.00:** (2 x \$325.00) the double return of the security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy

ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, I find that the landlord neither repaid the security deposit, nor filed an application for dispute resolution within 15 days of being informed by the tenant of her forwarding address on September 15, 2014. Accordingly, I find that the tenant has established entitlement to the double amount of her original security deposit as claimed.

\$50.00: *filing fee*

As the tenant has achieved a measure of success with her application, I find that she has established entitlement to recovery of the full filing fee.

Total: \$700.00 (\$650.00 + \$50.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$700.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims 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: November 05, 2014

Residential Tenancy Branch

