



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of the application.

The parties both attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, however the tenant stated that she had not received the landlord's material. The landlord stated that it was sent to the tenant at the address on the Tenant's Application for Dispute Resolution but was returned to the landlord marked, "Moved – No Forwarding Address." The tenant responded that her address had changed and she had not provided a new one to the landlord, and all evidence provided by the landlord and by the tenant has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?
- Has the tenant established a monetary claim as against the landlord for aggravated damages or devaluation of the tenancy due to mold in the rental unit?

Background and Evidence

The tenant testified that this tenancy began as a fixed term lease for one year on May 1, 2011 and then reverted to a month-to-month tenancy, which ultimately ended on February 28, 2015. Rent in the amount of \$1,450.00 per month was payable in advance on the 28th

day of each month and there are no rental arrears. At the beginning of the tenancy the landlord collected, in cash from the tenant's boyfriend, the first and last month's rent as well as a security deposit in the amount of \$725.00. The landlord did not issue any receipts. A copy of the tenancy agreement has not been provided by either party, and the tenant testified that no move-in or move-out condition inspection reports were completed..

The tenant further testified that she told the landlord in September, 2014 that the tub was leaking. The landlord attended the rental unit and took the faucet out of the tub. The floor of the bathroom remained squishy and water leaked out of the seals under the tub. The whole bathroom floor was rotted and the tenant scraped 3 inches of black mold off the floor in November and December, 2014. Mold existed around toilet as well as the sides of bathroom walls and a hole in bathroom floor remained such that the tenant could see the basement through it, and the leak spilled into the lower level of the rental unit. The flooring wasn't fixed until after the tenant moved out. The landlord was going to but it was too wet, and all he was going to do was put some paste down for the flooring tiles without replacing the floor. Photographs have been provided which the tenant testified were taken prior to vacating the rental unit.

The tenant further testified that the landlord collected the last month's rent twice, which the tenant didn't notice until her ex-boyfriend made her aware of a few months ago. He had paid the last month's rent at the beginning of the tenancy and the tenant gave the landlord a cheque dated February 1, 2015 as well, and then instead of cashing the cheque, the tenant took the landlord to the bank and gave him cash for rent for February, 2015. When asked why she hasn't applied for return of one month's rent, the tenant responded that she didn't know why.

The landlord testified that the tenants didn't pay the first and last month's rent at the beginning of the tenancy. The landlord has been a landlord for over 10 years and knows that is not legal. The landlord also denies collecting any security deposit from the tenants. They were supposed to pay one but to the best of his recollection none was paid, and they were nice folks so he didn't want to chase them for it.

The landlord further testified that when the tenants moved in, the condition of the rental unit was not very good. The tenants did the labor to bring it to a better condition and the landlord paid for materials such as flooring and paint.

On February 1, 2015, the landlord received a cheque for February's rent but still has it; the bank says there's no money in the account. A copy of the unprocessed cheque has been provided.

The landlord agrees that both toilets and tubs do have mold. In the upstairs level it looked like they allowed it to run on the floor – everywhere was wet. One day the landlord went there and took out faucet. The tenants could still use the shower but not the tub. He testified that the mold build-up was because the tenants didn't use a shower curtain and allowed the tub to overflow. The landlord went there occasionally during the tenancy and all was fine till close to the end. They didn't take care of it.

Analysis

There is absolutely no evidence before me to corroborate the tenant's testimony that a security deposit was collected by the landlord at the commencement of the tenancy, or that the tenants paid the first and last month's rent at that time. The landlord disputes that and where it boils down to one person's word over another, the claim has not been proven. Therefore, I dismiss the tenant's application for return of all or part of the pet damage deposit or security deposit.

The tenant has also claimed aggravated damages for the mold build-up in the rental unit that was not addressed by the landlord during the tenancy. The landlord denies responsibility but did not deny the fact that the mold existed. The photographs of the tenant show extreme amounts of mold build-up in the rental unit, and I do not accept that that much mold collected from a recent leak. A landlord is required under the *Act* to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. I am satisfied that the landlord was aware of it and made no attempts to clean it up or make the repair necessary to prevent reoccurrence. I find that the tenant suffered aggravated damages for the loss of enjoyment of the rental unit, and the tenant is entitled to compensation.

The tenant claims full rent for the last 5 months of the tenancy totaling \$7,250.00. I find that amount to be excessive considering that the tenant had a roof over her head for that entire period. In the circumstances, I find that the tenant has established a claim of $\frac{1}{4}$ of the rent for that 5 month period, or \$1,812.50.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,912.50.

This order is final and binding and may be enforced.

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 17, 2015

Residential Tenancy Branch

