



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, MNSD, ERP*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation, for the return of rent and for the return of the security deposit. The tenant also applied for an order directing the landlord to carry out emergency repairs.

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.

During the hearing it was determined that the tenant had already moved out but had not returned the key to the landlord. The tenant did not provide the landlord with a forwarding address. The landlord has a forwarding address as of the date of this hearing. Therefore the tenant's application for the return of the deposit will be dealt with when the tenant returns the key and attends a move out inspection. The landlord will return the deposit in compliance with s.38 of the *Act*.

Since the tenant has moved out her application for an order directing the landlord to carry out emergency repairs is moot and accordingly dismissed.

Therefore, this hearing only dealt with the tenant's monetary claim for the return of rent, moving costs and compensation for medical, emotional and mental damages.

Issues to be decided

Was the landlord negligent with regard to responding to the tenant's complaints of mould in the rental unit? Is the tenant entitled to compensation for medical, emotional and mental damages? Is the tenant entitled to the return of rent and to the cost of moving?

Background and Evidence

The tenancy started on May 12, 2016. The monthly rent was \$610.00 due on the first of each month. Prior to moving in, the tenant paid a security deposit of \$305.00.

The tenant stated that she complained about the smell of mould in the rental unit on the first day of tenancy - June 01, 2016. The landlord stated that neither she nor the cleaners were able to smell mould but she ordered fans to be installed in the unit. The fans arrived in the last week of June and were installed immediately.

The tenant continued to complain and the landlord made multiple requests to the tenant to allow a maintenance person to attend the unit. The tenant refused all requests and finally the landlord issued a 24 notice of entry to the tenant and entered the rental unit on July 14, 2016. On that same day, the tenant informed the landlord that she would be moving out and did so on July 20, 2016.

The landlord agreed that she allowed the tenant out of the lease with no penalty. The tenant is claiming the following:

1.	Return of rent	\$1,613.82
2.	Moving costs	\$400.00
3.	Compensation	\$3,265.64
	Total	\$5,279.46

Analysis

Section 32 of the *Residential Tenancy Act*, addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this case, I find that the landlord fulfilled her obligations by acting on the tenant's complaints in a timely manner and making the necessary arrangements to address the problem.

I also find that the tenant did not cooperate fully with the landlord regarding permitting the maintenance personnel access to the rental unit. The tenant carried out a mould inspection which indicates the presence of mould in the unit.

The landlord offered the tenant alternative accommodation while the unit was being treated for mould and the tenant did not take advantage of the offer.

The tenant stated that her daughter suffers from a medical condition and is unable to live in a unit with mould. The tenant did not provide any medical information to support her testimony. The tenant also moved to a city that is according to her 1,200 kilometers away from the rental unit.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord. The landlord offered the tenant alternative accommodation which she refused. Therefore the tenant has not established a claim for compensation.

In addition, based on the evidence before me and the testimony of both parties, I find on a balance of probabilities that it is more likely than not that the tenant decided to move out for other reasons and is attempting to use the mould issue as a reason for moving out. Accordingly, I find that the tenant is not entitled to the return of rent or moving costs.

Conclusion

The tenant's application is dismissed in its entirety.

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 29, 2016

Residential Tenancy Branch

