



Dispute Resolution Services

Page: 1

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 MND MNR MNSD FF O

Introduction

This hearing convened pursuant to monetary claims by the tenant and the landlord.

Preliminary Issues

The tenant, an advocate for the tenant and two agents for the landlord called in to the teleconference hearing on October 27, 2016 and December 16, 2016. On the first date the tenant had not received the landlord's application, and I determined that it was appropriate to adjourn the hearing so that the landlord could serve the tenant. On the second date, the parties confirmed that they had received the other party's application and evidence. The tenant gave testimony, and at 82 minutes I adjourned the hearing for a second time.

When the hearing reconvened again on January 20, 2017, only the tenant and the tenant's advocate called in to the hearing. Therefore, as the landlord did not attend the hearing, and the tenant appeared and was ready to proceed as respondent for the landlord's claim, I dismiss the landlord's claim without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Is the tenant entitled to double recovery of the security deposit?

Background and Evidence

The tenancy began on May 1, 2016, with monthly rent of \$1,025.00 after an incentive of \$200.00 was deducted. At the beginning of the tenancy the tenant paid the landlord a security deposit of \$299.00.

The tenant stated that by June 2016 she started getting headaches and nosebleeds, as well as light-headedness, and her six-year-old daughter started having trouble breathing and had to go on an inhaler. The tenant stated that there was constant marijuana smoke coming from the tenants upstairs, and the smoke could be smelled very strongly at the entrance and in the hallway on the second floor. The tenant stated that she spoke to the landlord many times about the marijuana smoke but nothing was done. The tenant stated that her doctor advised her to move out of her unit in case the illnesses that she and her daughter were suffering were brought on by the living environment.

The tenant stated that she also complained to the landlord several times about the noise coming from the upstairs tenants. The tenant stated that the tenants above were jumping around so much that her light was flickering on and off. The tenant stated that despite her verbal and written complaints, the noise issue was not resolved until she spoke to the upstairs tenants herself.

The tenant stated that she had a suspicion that mould was growing in her bathroom, and she brought it to the landlord's attention. The tenant stated that the landlord snapped back that there was no mould in the entire building and the tenant would have to get proof of significant mould before they would do anything. The tenant stated that she made appointments with three different companies to do a mould assessment, but the landlord did not approve them. The tenant stated that the landlord also avoided allowing health inspectors to access the building. The tenant stated that the landlord and a maintenance person came to her unit to inspect the mould in her bathroom, and the maintenance person only scraped a bit of grout and said it was mildew. The tenant submitted 33 photographs of what appears to be mould on the bathroom tiles and grout.

The tenant stated that she decided to vacate the unit and she slipped a note under the landlord's office door. The tenant acknowledged that she did not give the landlord her forwarding address in writing.

Due to the conditions the tenant suffered, she has claimed compensation equivalent to half of her rent, \$512.50, for the last three months of her tenancy.

Analysis

I accept the tenant's evidence as clear and credible regarding the conditions of her rental unit during the last three months of her tenancy. I accept the tenant's undisputed evidence that she informed the landlord of the problems with marijuana smoke and noise coming from the upstairs tenants and problems with potential mould, all of which

the landlord did not properly address. I find that the tenant is entitled to some compensation for loss of quiet enjoyment and use of the rental unit.

However, I find that the tenant has not provided sufficient evidence to show that her losses were so severe that she should be compensated for half of her rent. The tenant did not establish that either marijuana smoke or mould in the unit was more likely than not the cause of the illnesses she and her daughter suffered. The tenant could have made an application for orders for repairs or other orders to ensure that the landlord properly addressed the tenant's concerns, but instead she chose to move out.

I find it appropriate in the circumstances to grant the tenant compensation equivalent to 20 percent of her rent, or \$205.00, for each of the last three months of her tenancy, for a total of \$615.00.

In regard to the security deposit, the tenant did not give the landlord a forwarding address in writing, and therefore the doubling provision of section 38 does not apply. The tenant is entitled to recovery of the base amount of her deposit, \$299.00.

Conclusion

The landlord's application is dismissed in its entirety.

The tenant's application was partially successful. I grant the tenant an order under section 67 for the balance due of \$914.00. This order may be 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: February 6, 2017

Residential Tenancy Branch