



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on February 16, 2017 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit - Section 38.

The Landlord applied on February 16, 2017 for:

1. An Order for unpaid rent or utilities - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on November 13, 2016 and ended on February 2, 2017. Rent of \$1,095 was payable on the first day of each month. At the outset of the tenancy the

Landlord collected \$547.50 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection with completed reports copied to the Tenant. The Tenant provided its forwarding address on February 2, 2017.

The Landlord states that the Tenant gave short notice to end the tenancy and paid no rent for February 2017. The Landlord states that the unit was advertised on websites on January 16, 2017 with available occupancy for February 15, 2017. The unit was advertised for the same rental amount as paid by the Tenant. The Landlord states that a new tenant was obtained on July 1, 2017. The Landlord states that the first rental fell through when the prospective tenant saw the state of the unit. The Landlord states that she was also out of town for some months so was not able to show the unit or work on the unit. The Landlord states that at some point before the next tenancy the Landlord decided to sell the unit so did renovations, starting February 17, 2017 and finishing June 15, 2017. The Landlord claims lost rental income of \$1,130.00.

The Tenant states that the Landlord was given a full month's notice on January 15, 2017 to end the tenancy on February 15, 2017. The Tenant states that the tenancy started mid-month and as the Landlord orally agreed at the onset to accept rent on the 15th day of each month. The Landlord states that there was no discussion about paying rent on the 15th day of each month and that the Tenant was served with a 10 day notice for unpaid rent in December 2016 for not paying rent on the first day of the month. The Landlord states that the Tenant also paid January 2017 rent in advance on December 23, 2017 so the Tenant knew very well that rent was payable on the first day of each month. The Tenant states that the Tenant asked the Landlord to issue that notice in order to speed up the provision of assistance from a government body.

The Tenant states that mold was discovered a couple of days after the move-in. The Tenant states that the ceilings on the bedroom and bathroom were sagging. The Tenant states that the unit smelled strongly and that the Tenant immediately asked for repairs. The Tenant states that three weeks after the move-in the Landlord painted the

unit but that this did not remedy the problem and that the Landlord did nothing to repair the ceilings. The Tenant states that her 9 year old child started to have breathing problems, that the physician prescribed an inhaler and told the Tenant to move out of the unit as soon as possible because of the mold. The Tenant states that the Landlord informed the Tenant that an ozone machine would be brought in only after the Tenant gave notice to end the tenancy.

The Tenant states that from the onset of the tenancy the unit was also infested with rodents and that the Landlord was immediately informed. The Tenant states that the Landlord placed mouse traps and then released the trapped mice outside the unit. The Tenant states that the Landlord did not call a pest control company. The Tenant states that she ended the tenancy because of the mold and rodents. The Tenant claims \$200.00 for the cost of moving.

The Landlord states that a chemical was used twice in December 2016 by the Landlord to destroy the mold in the cupboards and under the sink. The Landlord states that the damage on the ceilings was old due to previous mold and that the ceilings were never replaced. The Landlord states that the unit had mold when it was purchased by the Landlord and that the Landlord repaired the unit herself by removing the insulation and using ozone to kill the mold that was growing in the bathroom. The Landlord states that no mold was growing in the bedroom as the Landlord inspected it herself and found the ceiling to be solid. The Landlord states that mold was only present in the cupboards and on the tub surround. The Landlord states that she does not have specialized training in mold removal or inspection and that the air was never tested for mold after the Landlord painted the unit. The Landlord states that even after the treatment by the Landlord the Tenant said the mold could still be smelled over the diffusers used by the Tenant. The Landlord states that the mold was killed by the chemical treatments and that the Landlord offered to use the ozone machine in order to pacify the Tenant.

The Landlord states that there is a rodent problem in the city where the unit is located. The Landlord states that in addition to traps, holes around the house were located and sprayed with filler. The Landlord states that the rodents were attended to just before Christmas. The Landlord also states that the unit was free of rodents by mid-December as no mice were caught or droppings found after mid December 2016. The Landlord states that the Tenant did not report any more mice after that. The Landlord states that the Tenant provided no medical documentation to support any illness and that the Tenant informed the Landlord that the tenancy was ending because the unit was too small. The Landlord states that the Tenant said nothing about mold or rodents as the reason for leaving.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Given the undisputed evidence of the Landlord attending to the unit in response to the Tenant's report of both the rodents and the mold, I find that the Tenant has not substantiated that the Landlord failed to act. The Tenant provided no supporting evidence that the Landlord should have acted differently and considering the Landlord's evidence of acts taken I find that the Tenant has not substantiated that the Landlord acted negligently. I therefore dismiss the Tenant's claim for moving costs.

Section 45(1) of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,
and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Given the signed tenancy agreement I find on a balance of probabilities that the Tenant agreed to pay rent on the first day of each month. Given the rental payment date, I find that by giving the notice to end on January 16, 2017 the Tenant could not end the tenancy sooner than February 28, 2017. Although I accept that the Tenant ended the tenancy due to the state of the unit, I find that the Tenant failed to give the required notice to end the tenancy.

Section 7 of the Act provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. The Landlord's evidence is that the initial prospective tenants rejected the tenancy due to the state of the unit and there is no evidence that the Tenant left the unit either damaged or unclean. The Landlord gives evidence that renovations were started on February 16, 2017 for the sale of the unit and therefore the Landlord's benefit. The Landlord was also not present for some period of time to show the unit or complete the renovations. Although the Tenant breached the Act by providing insufficient notice to end the tenancy, given the Landlord's evidence of the state of the unit and its own inaction I find that the Landlord failed to take reasonable steps to reduce or mitigate the rental loss claimed and I therefore dismiss the Landlord's claim for unpaid February 2017 rent.

As the Landlord's rental claim has not met with success I decline to award recovery of the filing fee. I find that the Landlord is not entitled to retain any portion of the security deposit and in effect the Landlord's application is dismissed. I order the Landlord to return the security deposit plus zero interest in the amount of **\$547.50** to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$547.50**. If necessary, 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: July 21, 2017

Residential Tenancy Branch