



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The tenant applies for return of the remainder of her deposit money and the doubling penalty under s. 38 of the *Residential Tenancy Act* (the “Act”). She also seeks damages claiming the landlord failed to provide reasonable heating, eradicate mould and mice, failed to repair a clothes washer in a timely fashion, prohibited or interfered with her having guests and failed to abate disturbing noise. Last, she seeks to recover the cost of paint she used to paint the interior of the rental unit.

She has filed a Monetary Order Worksheet outlining her claims.

The tenant, her assistant and the landlord Mr. B.M. attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence show on a balance of probabilities that the landlords have breached the Act or the tenancy agreement? If so, what if any damage has the tenant suffered and what is an appropriate measure of damages in that event.

Background and Evidence

The rental unit is a two bedroom basement suite in the landlords’ home. There is a second basement suite rented to others.

The tenancy started in November 2015. The rental unit was occupied by the tenant and her two children then ages ten and thirteen. There is a written tenancy agreement. The monthly rent was \$900.00. The tenant gave written notice, including her forwarding address, in December 2016 and vacated the premises January 30, 2017.

The landlords returned \$750.00 of the \$900.00 in security and pet damage deposits. They unilaterally retained \$150.00 to cover the cost of carpet cleaning they felt necessary.

The tenant says she was without heat for four months. She bought a space heater and the landlords eventually gave her another.

She says the rental unit had mould growing under or behind a bunk bed and in dresser drawers. She first noticed it three months after move-in. She produced photos of some dark substance on windowsills and in drawers. As well, she spread "damp mats" to collect moisture as evidence (not to dehumidify the suite) of excess moisture.

The tenant claims she had a bad ant problem. Water seeped in under her door in foul weather.

During the last two months of the tenancy she says she had mice coming into the home. She placed traps accordingly.

At the end of the tenancy she painted the rental unit.

She says that the clothes washer she shared with the other basement suite occupants broke and that the landlords took two weeks to replace it.

The tenant testifies that the landlords told her she could not have guests, even during the day and, when she did, they would follow the guest around outside in the yard.

Near the end of the tenancy the landlords' children made too much noise in an adjoining basement room the landlords' had reserved for their own use.

The landlord Mr. B.M. testifies that the tenant's complaints are, in his opinion, all fabrications. He says the tenant did not clean the premises and left garbage outside her door for very long periods of time,

He says the house is eight years old. The basement shares the same heating system as the upper part of the house. The tenant's suite has its own thermostat.

In his view the mould was there because the tenant never cleaned and failed to ventilate the suite.

He says there is no place for mice to enter this modern home unless the tenant leaves her door open.

While the washing machine was broken the tenant was given the use of the landlords' machine upstairs.

He says the tenant was never denied guests but some would stay for three days or so.

He says the previous tenants never complained about the rental unit and neither have the new tenants.

When the tenant moved out the carpet was very wet and smelled of urine. He cleaned it twice and the new tenant cleaned it another two times.

Analysis

Security Deposit

Section 38 of the *Act* requires that once a tenancy has ended and once the tenant has provide a forwarding address in writing, a landlord has fifteen days to either repay the deposit money or make an application for dispute resolution claiming against it. If a landlord fails to do either of those things he is penalized by having to account to the tenant for double the deposit amount.

That is the case here. The landlords have not yet brought an application against the tenant for a monetary award. They are outside the fifteen day period. They are therefore required to account to the tenant for double the deposit money: \$1800.00, less the \$750.00 paid. The tenant is entitled to the remainder of \$1050.00.

Heat

I must dismiss this item of the claim. There is no evidence about how cold the rental unit became. What might be adequate heat for one person may be too hot or too cold for another. Without this evidence it is not possible to determine that the landlords failed in their obligation to provide adequate heat.

Mould

I must dismiss this item of the claim also. Accepting that the dark areas in the tenant's photos are mould and that it is of a harmful type, there are at least two ways it can arise. A landlord might be providing substandard premises with water leaking into the walls or ceiling or perhaps premises without adequate heat or ventilation. It is equally possible

for mould to arise as a result of tenant conduct, by frequent use of bathrooms and showers without opening windows or using a fan or by cooking without using a hood fan.

It is not possible to determine the cause of the mould on the evidence presented at this hearing.

Mice

I must dismiss this item of the claim also. The tenant's evidence establishes that at the end of her tenancy mice were entering the unit. The landlord Mr. B.M.'s testimony that it is a relatively new house and that the other basement tenants had no mice, detracts from the conclusion that it was the landlord's failure to provide adequate accommodation that led to their entry.

In all the circumstances the tenant has not proved on a balance of probabilities that the mice she encountered were the landlords' fault.

Laundry

I dismiss this item of the claim. Washing machines break down and some accommodation must be made by the tenant. The landlords' offer to let the tenant use their machine for two weeks was a reasonable solution.

Guests

The tenant was aware that landlords could not prevent her from having an occasional guest. On the competing evidence, the tenant has not established that she was prevented or significantly interfered with in having guests. She may have been bothered by them occasionally but that is not, in my view, significant enough to warrant an award of damages. I dismiss this item of the claim.

Noise

I must dismiss this item of the claim. There is little evidence upon which one could assess the level of noise, its time or frequency. There is no convincing evidence that the tenant complained to the landlords about it or let them know the noise was disturbing her.

Paint

I dismiss this item of the claim. The tenant chose to paint her suite. It was not a requirement the landlords place on her. There is no evidence that they agreed to reimburse her for doing so. She must bear the cost of that work.

Conclusion

The tenant is entitled to a monetary award of \$1050.00. As the landlords were wrong to hold it, I award the tenant recovery of the \$100.00 filing fee. She will have a monetary order against the landlords in the amount of \$1150.00.

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 19, 2017

Residential Tenancy Branch