



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MNR-S, FFL
Tenant: MNSD, MNDCT, FFT

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

The landlord filed their application February 26, 2018 for an Order to recover unpaid rent in the amount of \$1700.00 and retain the tenant's security deposit in partial satisfaction of their claim, and to recover their filing fee of \$100.00.

The tenant filed on February 28, 2018, for the return of their security deposit and compensation for loss, and to recover their filing fee \$100.00.

Both parties attended the hearing and were given opportunity to mutually resolve their dispute to no avail. The hearing proceeded on the merits of the parties' respective applications. Both parties were given opportunity to present *relevant* evidence and make *relevant* submissions. The parties acknowledged receiving the evidence of the other inclusive of document and photograph evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence they wished to present.

Preliminary matters

The style of cause of the tenant's application is amended removing their young children SS and DS as applicants/respondents in this matter.

In the hearing the landlord confirmed to me, orally amending their application that they are solely seeking to retain the security deposit of \$850.00 in full satisfaction of their claim.

The tenant confirmed to me, orally amending their application, that they sought solely to recover their security deposit of \$850.00 and compensation pursuant to Section 38 of the Act (double security deposit), recover the fee for a mould inspection in the amount of \$525.00, and for loss in the sum equivalent to the 7 months of the tenancy's payable rent in the amount of \$11,900.00.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The relevant evidence in this matter is as follows. The parties agreed the tenancy began July 01, 2017 and has since ended. The tenancy was guided by a written tenancy agreement of which I have benefit of a copy. The agreed payable monthly rent under the written agreement was \$1700.00 payable on the 1st of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$850.00, which they retain in trust. The parties agreed that at the start of the tenancy they performed a mutual move in inspection in accordance with the Act which was recorded on a Condition Inspection Report (CIR). At the end of the tenancy the parties performed a mutual end of tenancy inspection as required by the Act. However, the landlord testified they did not complete a CIR in respect to the move out inspection. None the less, the landlord gave the tenant a cheque in the amount of the security deposit of \$850.00, to which the landlord then placed a *stop payment*.

The parties agreed the tenancy ended February 17, 2018 when the tenant vacated the rental unit, subsequent to the tenant providing the landlord with an e-mail on February 15, 2018 notifying the landlord they were vacating at the end of February, 2018. The landlord accepted the tenant's notice and the tenant vacated in accordance with it. The parties agreed the tenant did not pay rent for February 2018. Neither party disputed that the tenant provided, and the landlord received, the tenant's forwarding address on February 17, 2018.

Landlord's application

The parties agreed the tenant did not pay rent for February 2018. The landlord sought to retain the security deposit of \$850.00 in satisfaction of rent owed.

Tenant's application

The tenant sought the return of their security deposit and compensation of double the amount pursuant to Section 38 of the Act.

The tenant provided they sought compensation of \$525.00 for the cost of a mould inspection and report. It is undisputed the landlord had agreed to compensate the tenant for the cost of the report.

The tenant submitted into evidence and testified that in early February 2018 they found indications of mould in a closet and they alerted the landlord. The tenant testified they determined the mould was responsible for their 2 children's respiratory distress. The tenant testified they think that the landlord knew of a mould problem in the closet and they had intentionally covered the mould area with paint.

The tenant provided evidence that their young daughter has a *chronic respiratory condition* manifesting as being *asthmatic* and for which she receives medical care. On February 06, 2018 a doctor prescribed the daughter 2 different respiratory enhancing medications (inhalers). The tenant provided a Doctor's note stating the daughter should avoid mould exposure as much as possible. The tenant provided that 2 weeks later the daughter's lung X-rays indicated the daughter's lungs were consistent with bronchitis.

The tenant also provided evidence their young son has a *chronic lung disease* which the tenant described as originating with his premature birth. The tenant testified that neither child's chronic medical condition should have exposure to any mould.

Moreover, the tenant testified that they believed the landlord knew of mould in the closet, covered it up, and after 7 months the tenant determined that the mould source they found had been contributing to their children's declining respiratory health.

Therefore, the tenant decided to vacate and return to the interior of the province where they had social and known medical support for their children.

The landlord testified they acquired the rental property in 2012, and has never painted the closet in question, and were not aware of a mould growth until the tenant notified them in February 2018. The landlord denied "covering up" a mould condition and is in the process of having the mould source rectified through the appropriate *Strata*

channels. They testified they are not responsible for the health concerns of the tenant's children.

Analysis

The parties may access referenced publications at: www.bc.ca/landlordtenant.

I have reviewed all relevant evidence of the parties. On the preponderance of the document and testimony evidence of the parties, I find as follows.

In respect to the landlord's application I find the landlord did not comply with their obligations pursuant to **Section 36** of the Act to conduct and record a mutual condition inspection at the end of the tenancy and therefore, in contravention of this section, lost their right to claim against the security deposit *for damage to the rental unit*. None the less, the landlord retained the right to claim against the security deposit for any monies owing for *other than damage* to the rental unit, which in this matter is unpaid rent. They were required to make such a claim within 15 days of receiving the tenant's forwarding address, which they did.

Section 26 of the Act, in relevant part, states;

Rules about payment and non-payment of rent

26 (1) 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.

The tenant failed to pay rent for the month of February 2018. As a result, the landlord remains owed the payable rent which they have self-limited to solely seeking retention of the security deposit in the amount of **\$850.00**.

In respect to the tenant's application the parties presented contrasting evidence in respect to the tenant's claim of 7 month's rent or \$11,900.00 for damage and loss. It must be known the burden of proving claims of damage or loss rests on the claimant. **Section 7** of the Act states the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, **Section 7** prescribed the tenant must satisfy *each* component of the test below:

1. Proof the loss exists,
2. Proof the loss occurred *solely because of the actions or neglect of the Respondent* (landlord) in violation of the *Act* or tenancy agreement
3. Verification of the actual amount required to compensate for the claimed loss
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

In this matter, the tenant must establish, on a balance of probabilities that they suffered a loss equivalent to 7 month's rent due to the landlord's neglect, or their failure to comply with the Act. And, if so established, did the tenant take reasonable steps to mitigate or minimize their loss?

I have reflected on the overall evidence advanced in support of the tenant's version of events. On balance of probabilities I find the tenant surmised that the landlord was aware of a mould related issue in the rental unit and that the landlord knowingly and actively covered up the problem which ultimately became evident in the children's pronounced respiratory conditions.

I accept the evidence of the tenant that their 2 young children may have negatively responded to some mould in the rental unit as a consequence of their admittedly compromised respiratory conditions, however they have failed to prove a loss occurred *solely because of the actions or neglect of the respondent* landlord in violation of the *Act* or tenancy agreement. In this respect I find I have not been presented with sufficient evidence, even on a balance of probabilities, that the landlord's conduct caused a loss to the tenant. As a result, **I dismiss** the portion of the tenant's claim for loss in the amount of \$11,900.00 without leave to reapply.

I find the evidence is that the parties agreed the tenant's cost for a mould inspection and report would be paid by the landlord. As a result, I find the tenant is owed for that cost in the amount of **\$525.00**.

I find the landlord made application to retain the security deposit in accordance with the Act therefore the tenant is not entitled to the doubling provision afforded by the Act.

As both parties have been partially successful in their application they are each entitled to recover their respective filing fees which mathematically cancel.

Calculation for Monetary Order

The security deposit will be offset in the awards herein.

<i>Landlord – award for unpaid rent</i>	\$850.00
Tenant - award for mould inspection	-\$525.00
net to landlord	\$325.00
<i>Minus security deposit in trust</i>	-\$850.00
to tenant	\$525.00

Conclusion

I Order the landlord may retain \$325.00 of the tenant's security deposit and return the balance to the tenant of \$525.00, forthwith.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$525.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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 28, 2018

Residential Tenancy Branch