



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing was reconvened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order for the recovery of the filing fee - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms its email address as set out in the Tenant's application.

Issues

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on October 20, 2019 and ended on November 24, 2019. Rent of \$1,850.00 was payable on the 20th day of each month. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit and \$300.00 as a pet deposit for a total of \$1,225.00. The Tenant sent its forwarding address to the Landlord by registered mail on December 16, 2019. The Landlord received the forwarding address. The Landlord has not returned the security deposit or made a claim against the security deposit.

The Tenant claims return of the security deposit and agrees to a deduction of \$310.00 from that amount for the rent payable for November 21 to 24, 2019 inclusive. The Landlord states that it did not return the security deposit due to damages left by the Tenant.

The Tenant states that at 4:00 a.m. on November 5, 2019 the Tenant awoke to a flood of the living room with water sitting on top of the carpet. The Tenant states that water was pouring out of the water heater. The Tenant states that it called the Landlord immediately and that the Landlord told the Tenant to get a plumber itself or the Tenant would have to wait for a couple of days before the Landlord could arrange repairs. The Tenant states that it informed the Landlord that it was the Landlord's obligation to obtain repairs. The Tenant states that on November 6, 2019 the Landlord had the water heater replaced and that on November 7, 2019 the Landlord's boyfriend used a wet vac on the carpet.

The Tenant states that it believed that mold would likely grow with 24 hours of the flood if nothing was done to dry the carpet. The Tenant states that despite informing the Landlord that the carpet and underlay needed to be pulled up with dryers and humidifiers in place the Landlord refused to do anything more. The Tenant states that on November 7, 2019 the Tenant informed the Landlord that it would not accept the unit in these living conditions and to let the Tenant know as soon as possible how the Landlord would remedy the situation. The Tenant states that the carpet stunk with mold, so the Tenant sent the Landlord information about proper remediation from the flood. The Tenant states that on November 8, 2019 the Landlord was informed that the carpet was still wet and stinking. The Tenant states that the Landlord refused to bring dryers. The Tenant states that the Landlord told the Tenant that the smell was caused by the Tenant's dog. The Tenant states that the Landlord then asked the Tenant to use bleach and cleaning products with a scrub brush on the carpet. The Tenant states that on November 10, 2019 this was done by the Tenant but that this did not resolve the

smell of mold and the carpet was still wet. The Tenant argues that the Landlord breached its obligations to provide a safe unit and that in its state it was unhealthy for the Tenant to reside in the unit. The Tenant states that it experienced headaches, nosebleeds, sore eyes, wheezing and coughing. The Tenant states that these are likely symptoms from inhaling mold spores. The Tenant states that due to these symptoms and the Landlord's refusal to remediate the carpet the Tenant had to move out of the unit as quickly as possible. The Tenant states that it did not see a medical doctor about the symptoms. The Tenant states that on November 20, 2019 the Tenant gave notice to the Landlord that it was moving out of the unit and the Tenant moved out on November 24, 2020. The Tenant provides photos of the affected carpet area.

The Tenant claims compensation for the costs of moving out of the unit as follows:

- \$289.78 for the moving truck;
- \$200.00 for the cost of one mover;
- \$70.00 for the cost of meals and beverages for helpers that included family members who helped with the move;
- \$368.00 for the Tenant's loss of employment income during two days of moving.

The Tenant claims \$12.73 in compensation for the cost of carpet cleaning products.

The Tenant claims \$11.08 as the costs of registered mail to provide its forwarding address to the Landlord and \$33.47 as the costs to make copies of its evidence.

The Landlord states that there was no flood and that there was only a leak that caused the carpet to be damp over a 2 square metre area. The Landlord argues that the Tenant's photo evidence does not support a larger affected carpet area. The Landlord states that after the original steam cleaning of the carpet on November 7, 2019 no dryers were used however the windows in the kitchen, hallway and living room were left open and the heat was turned up. The Landlord states that the company who steam cleaned the carpet on November 29, 2010 was asked by the Landlord to use probes to

test for mold and that the company informed the Landlord that no mold was found. The Landlord states that it did not see the company use probes. The Landlord states that it did everything properly and argues that the Tenant left of its own choice and not because of the state of the unit.

The Tenant states that the carpet had enough water on it to cover the Tenant's toes. The Tenant states that this area was double the size as stated by the Landlord. The Tenant states that the entire bottom of the water heater had ruptured beyond repair and that this is supported by the fact that the Landlord had the water heater replaced. The Tenant argues that the carpet cleaning company is not a mold expert and can only look for mold on the surface of the carpet. The Tenant argues that the carpet company evidence does not indicate that any special equipment was used to inspect the carpet for mold and that the company did not inspect the underlay. The Tenant states that it does not have evidence that the underlay was wet except for its symptoms and its belief based on the Tenant's research.

Analysis

Section 32(1) of the Act provides that A landlord must provide and maintain residential property in a state of decoration and repair that

- (a)complies with the health, safety and housing standards required by law, and
- (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. While it can be accepted that the unit was flooded and that the Landlord failed to take reasonable steps to ensure a safe carpet by using dryers, the Tenant has no evidence to support that the carpet became unsafe due to mold growth while the Tenant was in the unit. The Tenant did not seek medical attention and has no supporting evidence that its symptoms were the result of mold in the carpet or unit at the time the Tenant moved out of the unit. Further the Tenant did not seek an order for

repairs of the carpet. For these reasons and given the Landlord's evidence that the carpet was not left damaged by mold I find that the Tenant has not substantiated that the unit became uninhabitable or that the Tenant's health was compromised by the lack of the Landlord's use of dryers causing the Tenant to have to move out of the unit. For these reasons I find that the Tenant has only substantiated a nominal compensation for having a wet carpet longer than should have been. I find that the Tenant is therefore entitled to **\$200.00**. I dismiss the Tenant's claims for all remaining costs associated with the Tenant's move out of the unit.

As it is the Landlord's obligation to make repairs to a unit where the Tenant is not responsible for the damages and given the undisputed evidence that the Landlord had the Tenant carry out some of that work, I find that the Tenant is entitled to reimbursement for its costs of **\$12.73** incurred in the clean up.

As there is no provision under the Act for a party to a proceeding to collect costs for participating in the proceeding other than recovery of the filing fee, I dismiss the Tenant's claims for the costs of registered mail and the costs to make copies of its evidence.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address and did not return the security deposit or made an application to claim against the security deposit, and as the Tenant has not waived any entitlement to return of double the security deposit, I find that the Landlord must now pay the Tenant double the security and pet deposits plus zero interest of \$2,450.00 (\$1225.00 x 2). Given the

Tenant's agreement to pay the Landlord \$310.00 from this amount leaves **\$2,140.00** owed to the Tenant.

As the Tenant's claims have met with some success, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee as claimed in its paper application for a total entitlement of **\$2,452.73**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,452.73**. 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 RTB under Section 9.1(1) of the Act.

Dated: June 9, 2020

Residential Tenancy Branch