

DECISION

Dispute Codes: MNDC, MNSD, FF

This hearing dealt with an application by the tenants for a monetary order for 1) compensation for loss under the *Act* and tenancy agreement; 2) the amount of the security deposit, applicable accrued interest, double the security deposit, and 3) recovery of the filing fee for the cost of the application.

On January 1, 2008, the landlord collected a security deposit in the amount of \$450.00 from the tenants. The tenancy began on the same day. A move in condition inspection and resulting report were also completed on January 1, 2008. On June 26, 2008, the tenants gave the landlord notice to end the tenancy effective July 31, 2008. On July 31, 2008, the tenants moved out of the unit.

Issue #1 – Whether the tenants are entitled to a monetary order for the amount of the security deposit, applicable accrued interest, double the security deposit?

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. I find that the tenancy ended on July 31, 2008, and that the tenants provided their forwarding address in writing on March 12, 2009. I further find that the landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing.

I find that the tenants have established a claim for the security deposit of \$450.00, accrued interest of \$6.75, and double the base amount of the security deposit in the amount of \$450.00, for a total of \$906.75.

Issue #2 – Whether the tenants are entitled to a monetary order for compensation under the Act or tenancy agreement?

The tenants gave the following evidence regarding a water leakage problem in their unit. Towards the end of May, they noticed a water leak in the ceiling of one of their bedrooms. At first, there was only one drip and the tenants put a garbage can underneath to catch the water. In early June, the tenants informed the landlord of the problem. The landlord indicated that the water leak was coming from their washroom located above and said that she would fix it. Three weeks later, the water leakage worsened and there were multiple leaks from the ceiling. The tenants again called the landlord to complain about the problem. The landlord said that the repairman had already been called but he had not yet shown up. In late June, tenant II woke up with water dripping onto her body. Again, the tenants called the landlord to complain. The landlord said that there was nothing she could do to control when the repairman would come. At the time, tenant JK was traveling out of the country. On June 27, 2008, tenant II left for Toronto. Before she left for Toronto, the landlord informed tenant II that the repair of the water leakage problem would be conducted in her unit while she was away. On July 16, 2008, tenant JK returned to the unit and informed tenant II over the phone that there were moulds in her room and that she was living at a friend's home instead. On July 28, II returned from Toronto and found the water leakage and mould problems to remain un-repaired. To support their claim, the tenants submitted several photos taken in July showing the water leakage from the ceiling and moulds on the walls of their unit.

The landlord did not dispute that there was a water leakage problem in one of the bedrooms or the images shown in the photos to be the conditions of the unit during the tenancy. She said that after receiving the tenants' complaint, she had stopped using the bathroom above the leakage. She contended that it was a

minor leak and that it was repaired. She added that the tenants never reported a problem with moulds in the unit.

The landlord said that the water leakage problem was repaired. I asked her several times when the repair was completed. She became hesitant and evasive. Eventually, she said that it could have been the end of June. The tenant said that the water leakage was never repaired up until when they left on July 31, 2008. I have accepted the tenants' testimony that the water leakage problem was never repaired during their tenancy for these reasons. The landlord was unable to provide a time frame for the completion of the repair or any proof that it was ever conducted. I have also considered the photos taken of the unit in July showing: 1) an opened ceiling with water leakage marks and moulds in the surrounding areas and 2) a large area of moulds in the base areas of the walls. Based on the above, I find the tenants to have proven that there was a water leakage and mould problems in the unit in the month of July. I also find that the unit was unsafe for occupation in July due to the existence of moulds. The tenants are seeking recovery of the monthly rent for July in the amount of \$900.00. I find that they are entitled to such recovery and I allow a claim for \$900.00.

Issue #3 – Whether the tenants are entitled to a monetary order for the return of their furniture rental fee for the period from August 1 to December 31, 2008?

The tenants said that they had a verbal agreement with the landlord whereas the tenants would rent some furniture from the landlord for \$35.00 a month and that on January 1, 2008, they paid the landlord \$420.00 in cash as furniture rental for a 12 month period from January 1 to December 31, 2008. They are seeking recovery of \$175.00 from the landlord because they moved out on July 31, 2008. I find no evidence to indicate that the furniture rental was part of the tenancy agreement. I therefore dismiss the tenants' claim in this regard for lack of jurisdiction.

Conclusion

Based on the above, I find that the tenants have established a total claim of \$1806.75. The tenants are also entitled to recovery of the \$50.00 filing fee for this application. I grant the tenants an order under section 67 for the balance due of \$1856.75. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 05, 2009.