



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation in the amount of \$4,300.00, for the loss of quiet enjoyment, for damage to personal property and for the return of double the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant informed me that he had received the landlord's evidence four days prior to the hearing and had not had enough time to file a rebuttal in writing but agreed that he did not require additional time and would respond to the landlord's evidence during his verbal testimony at the hearing.

Issues to be decided

Was the landlord negligent with regard to responding to the tenant's complaints of mice in the rental unit? Did the tenant suffer a monetary loss from damage to his personal belongings? Is the tenant entitled to the return of double the security deposit and to the recovery of the filing fee?

Background and Evidence

The tenancy started on August 01, 2011 for a fixed term of six months. The tenant moved in two weeks prior to the start of tenancy and was not required to pay rent for this period. The monthly rent was \$1,100.00 due on the first of each month. Prior to moving in, the tenant paid a security deposit of \$550.00.

The landlord stated that at the time the tenant moved in, she was in the process of preparing the unit for the tenancy to start on August 01, 2011. On July 20, the tenant complained of a mice problem and the landlord arranged for an exterminator to treat the property. The landlord stated that the exterminator is located at a distance and the earliest he could attend was August 08, 2011. A second treatment was done on August 29, 2011.

The tenant stated that her furniture was moved to the center of the room for the treatment and sometime during the treatment, her armoire sustained some damage. The tenant filed a photograph of the armoire that depicts a chip on the upper edge. The tenant stated that the armoire is 11 years old and was purchased for \$600.00 as a gift for her child. The tenant is claiming \$ 400.00 for the loss of value of the armoire. The tenant stated that she informed the landlord of the damage at the time it happened but did not make a monetary claim at that time. The landlord stated that if the tenant had intentions of making a claim then she should have done so at the time of the damage, so that the landlord could have forwarded the claim to the company that carried out the treatment and caused the damage.

On August 30, 2011, the day after the second treatment, the tenant informed the landlord that the problem had not been eradicated. The landlord arranged for a handyman to plug holes and do other repairs that would prevent mice from entering the home. The landlord filed an invoice in the amount of \$1,120.00 that she paid for this work which was done on September 07, 2011. The landlord offered to cover any costs of traps that the tenant had bought. In addition, the landlord gave the tenants a discount of \$100.00 off the rent for August, for the inconvenience of the mouse problem. The tenant is claiming the return of two months' rent for the inconvenience endured during the tenancy, due to the mice problem.

The tenant made another complaint on October 20 via email regarding the mouse problem and also informed the landlord that he was going on vacation. The landlord did not action the complaint because the tenant was away on vacation. The landlord stated that no more complaints were made during the month of November.

Despite having signed a fixed term tenancy agreement which would end on January 31, 2012, on December 01, 2011, the tenant gave notice to end the tenancy as he had purchased a home of his own. The effective date of the notice was December 31, 2011.

The tenant stated that on December 07, a pipe burst and water entered the basement. His belongings consisting of craft supplies, sewing materials and fabrics were water damaged and had to be discarded. The tenant is claiming \$300.00 towards the cost of these items. The tenant did not have photographs or receipts to support his claim.

The landlord stated that the tenant did not report the presence of water in the basement and when he did, the landlord made arrangements to have it checked out. It was determined that leak was caused by the outside tap being left open. It was also found that the pipe had not been winterized which was the tenant's responsibility to do so, as per a term in the addendum to the tenancy agreement.

The tenant also stated that his clothes were ruined due to mouse and squirrel droppings and is claiming \$300.00 as damages. The tenant did not file any photographs or invoices to support his claim.

The tenant agreed that he requested the landlord to allow him to pick up the security deposit. On February 14, 2012, the landlord informed the tenant that the deposit was ready for pick up. The tenant visited the office to pick up the cheque on February 16, 2012. The landlord requested the tenant to sign a document waiving all rights to claims against the landlord but the tenant refused to do so. The tenant did not pick up the cheque and filed this application on March 05, 2012.

In summary the tenant is claiming the following:

1.	Damage to Armoire	\$400.00
3.	Damage to clothing from mice droppings	\$300.00
4.	Compensation for loss of quiet enjoyment	\$2,200.00
5.	Return of double the security deposit	\$1,100.00
6.	Filing fee	\$50.00
	Total	\$4,350.00

Analysis

1. Damage to the armoire - \$400.00

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the armoire. As per this policy, the useful life of furniture is ten years. The tenant testified that the armoire is eleven years old and therefore at the time it was damaged it had outlived its useful life. Accordingly, the tenant's claim for \$400.00 for the armoire is dismissed.

2. Water damage to personal belongings - \$300.00

In order to claim for damage or loss under the *Act*, the tenant bears the burden of establishing that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. As per a term in the tenancy agreement, it is the tenant's responsibility to take precautions against freezing of water in and about the rental unit. The tenant is also responsible for damage or loss caused by neglecting to do so.

Based on the testimony of the landlord, the water that entered the basement was from an outside tap that was left open and was not winterized. Therefore I find that the landlord is not responsible for the damage and accordingly the tenant's claim for \$300.00 is dismissed.

3. Damage to clothing from mice droppings - \$300.00

Despite the landlord's efforts to eradicate the mice, on a balance of probabilities, it is more likely than not that the tenant did suffer some loss due to mice droppings. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

The tenant did not file documentary evidence like photographs and/or invoices to support his claim and has also received \$100.00 by way of a rent reduction in August. Accordingly, I find it appropriate to award the tenant a minimal award of \$50.00 towards the loss of her clothing.

4. Compensation for loss of quiet enjoyment - \$2,200.00

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

In this case, I find that the landlord fulfilled her obligations by acting on the tenant's complaint in a timely manner and making the necessary arrangements to address the rodent problem. Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord.

I find that the tenant may have been inconvenienced while the rodent problem was being resolved, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment and therefore the tenant's claim for the return of rent is dismissed.

5. Return of double the security deposit - \$1,100.00

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of the both parties, I find that that at the tenant's request, the landlord had the security deposit ready for pick up on February 14, 2012 which is within the required time frame of 15 days. The landlord currently holds a security deposit of \$550.00 and is obligated under section 38 to return this amount. The tenant is not entitled to the return of double the security deposit.

6. Filing fee - \$50.00

The tenant has proven a relatively small portion of his claim and must therefore bear the cost of filing this application.

Overall the tenant has established a claim for \$600.00 which consists of \$50.00 for loss of clothing and \$550.00 for the return of the security deposit.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$600.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order in the amount of **\$600.00**.

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: May 08, 2012.

Residential Tenancy Branch