



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parsum Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on April 01, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this tenancy started on March 01, 2014 for a fixed term of one year. Rent was \$900.00 per month and due on the 1st of each month. The tenant paid a security deposit of \$450.00 on February 04, 2014. The tenant attended a move in inspection with the landlord at the start of the tenancy but did not receive a copy of the inspection report. The tenancy ended on March 29, 2014 and the landlord failed to arrange a move out inspection with the tenant. The tenant provided a forwarding address in writing on March 31, 2014 and has provided evidence that this was received by the landlord on April 01, 2014.

The tenant testified that when she came to view the unit on February 28, 2014 there was a strong smell of smoke in the unit. The tenant asked the building manager if anyone had smoked in the unit and was told that the smell was because the windows had been closed for some time. The tenant opened the windows and moved into the unit on March 01, 2014. The tenant testified that the smell remained in the unit and on closer examination it appeared to be coming from the outlets, and heating vents in the walls. The tenant identified the smell as cigarettes and marijuana. The tenant testified that she had been assured by the building manager that this was a non smoking building; the tenancy agreement states that no smoking is allowed and a notice that was sent to tenants reiterated this.

The tenant testified that she lived in the unit for a few days but suffered health issues such as headaches and lack of sleep due to the smell of smoke in her unit. The tenant testified that she called the landlord and wrote to the landlord complaining of this and requesting that something is done to protect the tenant's right to quiet enjoyment of her unit free from the smell of smoke and marijuana. The tenant testified that on March 04,

2014 the tenant had to go and stay at a friend's unit. Due to the effect on her health from the odour of smoke On March 06, 2014 the landlord posted a notice of entry for March 07 but the tenant was not at the unit so was not aware if the landlord entered or not. The tenant testified that during a conversation with the landlord on March 05, 2014 the landlord was aware of the issues and informed the tenant it would be fixed within 24 hours.

The tenant testified that the smell of smoke reminded in the unit and a further letter was sent to the landlord on March 08, 2014 notifying the landlord that there was no change to the odour in the unit. The tenant testified that further telephone conversations took place between the manager and the tenant and the manager informed the tenant it would be remedied by April 10, 2014. The tenant testified that she had been able to stay in her unit due to the smell of smoke and could not wait another month for this to be remedied by the landlord having the tenants below evicted for smoking in their unit. The tenant asked the landlord for another unit in the building that the tenant could stay in but there was no response from the landlord concerning this. The tenant testified that she asked the landlord to fix the problem by March 21, 2014 or the tenant would have to move out and asked the landlord for a mutual agreement to end tenancy. The tenant testified that the problem was not resolved and as the tenant had been unable to reside in her unit since March 04, 2014 the tenant wrote to the landlord informing the landlord that the tenant was vacating the unit. The tenant asked the temporary building manager to arrange a move out inspection but was told that he did not have the necessary paperwork and to just drop off the key.

The tenant provided a forwarding address in writing but the landlord has not returned the tenant's security deposit within 15 days of receiving that. The tenant therefore seeks to recover double the security deposit to an amount of \$900.00. The tenant also seeks to recover the rent paid for March of \$900.00 as the unit was not fit for occupation due to the cigarette and marijuana smell and the landlord inability to remedy this effectively within a reasonable period of time.

The tenant also seeks to recover \$30.00 paid to her doctor for a medical note concerning the strange odour in her apartment which has caused the tenant significant stress and impaired her functions. A copy of this doctor's note has been provided in documentary evidence. The tenant seeks to recover the amount of \$38.39 for the registered mail costs incurred in sending documents for this hearing to the landlord. The tenant also seeks to recover the \$50.00 filing fee from the landlord.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me.

I refer the parties to s.32 (1) of the *Act* which states:

32 (1) *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.

A landlord must also ensure that the tenant's right to quiet enjoyment of her unit is protected. While this may or may not relate directly to an obnoxious smell in the unit a landlord must still comply with the *Act* regarding any complaints a tenant has concerning matters which render the unit unfit for occupation.

I am satisfied from the evidence before me that the tenant did experience an obnoxious odor in her unit relating to the smell of cigarettes and marijuana filtering through the

outlets and vents in the tenant's unit from another unit. While I accept that the landlord was attempting to remedy this issue it was unconscionable for a landlord to expect a tenant who is sensitive to the smell of smoke from these substances to have to live in the unit particularly when the building is designated as a non smoking building.

I find the tenant gave the landlord ample time to find a remedy to this situation and was unable to live in her rental unit, for which rent had been paid, due to the adverse affect on the tenants health for the majority of March. Consequently, it is my decision that the tenant was entitled to end the tenancy and may recover the rent paid for March of **\$900.00** from the landlord.

With regard to the tenant's claim to recover double the security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on April 01, 2014. As a result, the landlord had until April 16, 2014 to return the tenant's security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and have not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to an amount of **\$900.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenant's claim to recover \$30.00 for the note from the doctor and \$38.39 for registered mail fees; there is no provision under the *Act* for the tenant to be

compensated for fees related to gathering or serving evidence to the other party. These sections of the tenant's claim are therefore dismissed.

I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND largely in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,850.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an Order of that Court.

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 18, 2014

Residential Tenancy Branch

