



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) A monetary order or rent rebate as compensation for expenses incurred and stress and illness caused by repairs not done to the property; and
- g) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated August 8, 2014 and of each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to a monetary order for rental arrears and to recover the filing fee for this application? The Order of Possession is no longer required as the tenants vacated.

Or is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities that they are entitled to compensation for a report and for the bad condition of the premises and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced July 1, 2014 on a fixed term lease to December 31, 2014, that rent is \$1400 a month and a security deposit of \$700 was paid on June 30, 2014. It is undisputed that the tenant has not paid rent for August or September but he made an Application on August 12th to request compensation totalling \$3549 for emergency repairs and rent rebate and to cancel the Notice to End Tenancy for unpaid rent.

The landlord said the prior tenant left in mid May and they did repairs totalling \$8,000 before re-renting. On the walk through, the only issue noted was some stains on the downstairs ceiling. No other problems were visible. The tenants said there was renovation when they inspected and they were assured all would be done before they took possession; there was no mould smell for the new paint had a strong smell. The landlord said the tenants called on July 7, 2014 concerning a mould problem under the kitchen sink and they sent a plumber to fix a leak for they thought it was connected to the renovation work. On the long weekend in August, the tenant said he investigated water coming into the basement and he found the wall soft and pulled it out to see where the water originated. He found a leaking pipe. He said the tenant said he was moving out so they left the mould remediation work to do after he moved. A plumber's invoice on August 18, 2014 notes the problems were fixed. The tenant noted that this shows the leak was not fixed until a month after their complaint. The tenants said they had to move and incurred costs of renting a U Haul plus the massive inconvenience of moving so soon after moving in.

The tenant provided an inspection report from a restoration company dated August 10, 2014 which they paid \$599.99 to obtain and a lab report that confirmed the presence of harmful mould growth in the basement laundry room and bedroom from samples collected on August 11, 2014; also they provided a doctor's letter confirming that a tenant's COPD had worsened in the past month due to her exposure to these harmful moulds. In evidence is an email from the daughter to the landlord on July 3, 2014 noting the mould problem and her mother's serious medical issue; she requests the landlord to have it inspected and repaired but assures him that she is paying July rent. The landlord does not respond to the issue but merely asks her to make the rent payment cash or debit.

The tenant request also a rebate of \$1400 for July rent because the landlord did not respond to this request and did not fix a plumbing leak for a month causing the situation to worsen; she asks also for \$200 for moving costs because they could not live there

and had to make an emergency move shortly after moving in. They said the neighbours told them it had been a grow-op but the landlord denies this.

The landlord pointed out that the tenants must pay rent according to the Act, whether or not the landlord had made repairs. The tenant vacated about September 5, 2014 and returned keys. Now remediation is occurring.

In evidence is the Notice to End Tenancy for unpaid rent, emails between the parties, the professional mould report and a doctor's report on the mother's illness and the kind of mould in the home causing it to worsen.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord entitled to rent of \$1400 plus late fee of \$25 for August 2014 as the tenants were still occupying the premises. Section 26 of the Act provides a tenant must pay rent when due whether or not the landlord fulfills his obligations under the Act; however if the tenant must pay for an emergency repair, the tenant is entitled to deduct that cost from rent according to section 33. I find the mould inspection was necessary for the health and safety of the tenants as provided under section 33(1), especially the mother who has COPD. I find they tried to have the landlord do it in early July but when he failed to do so, they paid for it themselves. Therefore, I find they are entitled to a deduction of \$599.99 from any rent owed to the landlord pursuant to section 33(3).

In respect to a request for a rent refund for July, I find the family did live there for July and August, the landlord had done extensive renovations before move-in and did fix leaks when requested, although they were very late in responding. As the tenants had to live about a month with a leak which likely caused more mould under the sink and worsened the breathing conditions, I find they are entitled to a rebate of 25% of the rent for July or \$350.

The tenants were forced to move due to the mould and health issues within two months of moving in and the landlord has had to do remediation; the lease was for 6 months and I find the tenants' evidence credible that this early move caused hardship physically and financially. I find the tenants' request for \$200 to compensate for the early move is reasonable and I award them \$200.

Conclusion:

I find the landlord entitled to rent for August 2014 and to recover filing fees for this application. The monetary order is calculated below.

I find the tenant entitled to a monetary order as calculated below and to recover filing fees for this application.

Calculation of Monetary Award:

Landlord rent plus late fee August 2014	1425.00
Filing fee	50.00
Tenant reimbursement for emergency inspection	-599.99
Tenant refund of 25% of July's rent	-350.00
Tenant compensation for moving early	-200.00
Tenant filing fee	-50.00
Balance owed to Landlord	275.01

The landlord has a security deposit of \$700 in trust for the tenant. I find the landlord may recover the above amount owed (\$275.01) by deducting it from the security deposit. This leaves a balance of **\$424.99** in trust for the tenant which must be dealt with in accordance with section 38 of the Act.

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 09, 2014

Residential Tenancy Branch

