



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 the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant claims for \$4,248.40:

Item	Amount
Moving Costs	\$358.40
Loss of Use of Bedroom	1,535.00
Replacement Mattress	1,455.00
Return of Security Deposit	450.00
Subsection 38(6) Compensation	450.00
Total Monetary Order Sought	\$4,248.40

The tenant appeared. The individual landlord appeared. The corporate landlord was represented by its agents PK and JB. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

For the reasons that follow, the tenant's claim is dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled return of all or a portion of her security deposit? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began on or about 1 June 2012. The parties entered into a written tenancy agreement dated 25 May 2012. The tenancy ended 31 October 2012. Monthly rent of \$920.00 was due on the first. The landlords collected a security deposit in the amount of \$450.00 at the beginning of the tenancy.

I was provided with a partial copy of the tenancy agreement. Clause 43 of the Agreement sets out that smoking of tobacco products is limited to within the rental unit.

The landlords and tenant both provided me with a copy of an internet advertisement for the rental unit. That advertisement sets out "one year lease, no smoking, no pets, no BBQs." The tenant testified that the internet advertisement for the rental unit indicated "no smoking". PK testified that the advertisement indicated "non-smoking" because they were only accepting non-smoking applicants.

The tenant testified that on 9 May 2012 she viewed the rental unit and did not notice any odors at that time. The tenant testified that on this date she asked the landlord GB if the building was a non-smoking building. The tenant testified that the landlord GB responded that the building was a non-smoking building. The tenant testified that GB told the tenant that no occupant of the building was a smoker. The tenant testified that on 10 May 2012 she went back to the rental unit and asked to sign the tenancy agreement. The tenant testified that she was told that she would sign the agreement later. GB testified that she did not and would not trick the tenant into renting the rental unit. GB testified that she is very aware that residents in the building smoke. GB testified that she does not recall the tenant asking about smoking.

The tenant testified that on 28 May 2012 she began occupancy of the rental unit. The tenant testified that she noticed a smell in the hallway and the kitchen and a mouldy smell in the bedroom.

The tenant testified that the first time she saw clause 43 of the tenancy agreement, which indicates that smoking was permitted, was on the day she signed the tenancy agreement. The tenant testified that this was on 30 May 2012. The tenant testified that on this date, and prior to signing the tenancy agreement, the landlord GB also told her that there was a smoker “grandfathered” into the rental unit next door. The tenant testified that she felt she had no choice but to sign the lease. The landlord GB testified that when the tenant raised her concerns on 30 May 2012 the landlord GB suggested that the tenant not enter into the tenancy agreement. GB testified that on 25 May 2012 she told the tenant to keep her belongings packed and consider looking for a new place.

The tenant testified that she has environmental sensitivities that she has lived with for the past eighteen years. The tenant testified that because of her sensitivities she always makes it her practice to specifically ask prospective landlords about mould, mildew and cigarette smoke. The tenant submitted that she should have her moving costs compensated because she would have never moved into the building had the landlord GB truthfully told her that there were smokers living in the residential property.

The tenant testified that the mould and cigarette odors were getting into her clothes and making her unwell. The tenant testified that on 15 June 2012 she asked the landlords to investigate the source of the mould smell.

The tenant testified that as a result of the persistent smell she could no longer use her bedroom. The tenant testified that she was sleeping on her couch.

The tenant testified that on 29 June 2012 a carpet worker came to investigate the source of the mouldy smell. The tenant testified that the carpet was stained and in “rough shape” but that there were no obvious water marks. The tenant testified that the carpet worker took a device that looked like a wooden broom handle with a needle on the end and touched the carpet a couple of times. GB testified that she saw the carpet worker on his hands and knees smelling for mould, but that he could not find anything. GB testified that the carpet worker inspected the entire rental unit. The tenant disputes that from GB’s position near the door, she could have seen the carpet worker performing his inspection. The tenant testified that the carpet worker did not use a meter.

The landlords submitted a receipt from the carpet company. That invoice set out the following service description:

Inspected for moisture and musty smells no elevated moisture on penetrating and none penetrating meters carpet and exterior walls around windows in bedroom

The tenant testified that on 30 June 2012 she went into her bedroom and discovered a wet mark on her bed. The tenant testified that she assumed that water had been dripping on the bed over the month of June. The tenant testified that she looked up and saw that the light fixture contained water. The tenant testified that she called the landlord GB to investigate. The tenant testified that she assumed that the moisture was coming from somewhere in the ceiling.

The tenant testified that an electrician came to look at the light fixture. The tenant testified that the electrician said that it looked fine. GB testified that the electrician took the light fixture down and inspected it. GB testified that the electrician could not see any moisture. The tenant testified that she took the glass cover off right after the electrician left and saw visible water.

The landlord submitted a receipt from the electrician. That invoice set out the following comments:

No damage to light fixture from water – wiring safe.

On 30 August 2012 roofers attended at the residential property. JB testified that he was on the roof with the roofers trying to find a source of the leak. JB testified that there was no pooling on the roof and that he had them reseal certain areas out of an abundance of caution. JB testified that no pipes run in the ceiling and that it is on the top floor of the rental unit.

The landlords submitted a receipt from a roofing company. That invoice set out that the following services were provided:

Repairs around vents and stacks in the vicinity of the leak manifestation as directed by the manager

No visible roof distresses were evidence on the field area of the roof

The tenant provided me with various photographs: Photographs 7 and 8 show water in the light fixture on two separate dates.

PK testified that the landlords dealt with all complaints quickly and appropriately. PK testified that no tenant before or since has complained about the water issue. PK submitted that the water accumulation was condensation and not a leak.

I was provided with an email from the tenant to the individual landlord dated 5 September 2012:

After you were up again yesterday to see the water in the bedroom light fixture it appeared to dry but is back again today, again filled with condensation and good sized water drops pooling near the bottom. ...

The tenant testified that she did not trust the contractors that were attending at the rental unit because of their prior relationships with the landlords.

On 19 October 2012, the tenant provided her forwarding address in writing to the landlord by putting the letter in the landlords' drop box.

I was provided with a carbon copy of the condition move out inspection report. This report is dated 31 October 2012. This report includes a security deposit statement. In that statement the amounts indicate that \$100.00 is being deducted from the security deposit amount for carpet cleaning. The balance due to the tenant is set out as \$350.00. The tenant has signed and dated in an area with the following statement:

I agree with the amounts noted above and authorized deduction of any Balance Due Landlord from my Security Deposit and/or Pet Damage Deposit. I further agree to pay the landlord the amount by which the Balance Due Landlord exceeds the amount of my deposit(s).

The tenant has written a note on the condition move out inspection that states: *not in agreement for carpet cleaning as proof of cleaning prior to move in was not supplied.*

JB testified that clause 23 of the tenancy agreement says that the tenant is responsible for cleaning the carpets at the end of the tenancy where they were cleaned at the beginning. The tenant testified that she believed that clause 23 only applied if she was there for the entire year.

The tenant testified that the box she signed was not completely filled out at the time she signed that space. The tenant did not recall when she got a copy of the condition move out inspection report. GB testified that the tenant did know about the carpet cleaning and that the only box filled out after the fact was the "balance due landlord" box. GB testified that on 14 November 2012 a copy of the previous invoice for carpet cleaning for

the rental unit was sent to the tenant. The landlords submitted a copy of this receipt. That invoice was dated 30 April 2012 and set out a total cost of \$90.00

GB testified that on 14 November 2012 she mailed the balance of the tenant's security deposit to her forwarding address. JB testified that he sent the tenant the past invoice for carpet cleaning on 14 November 2012. JB testified that the cheque stub shows this date. The tenant testified that she received return of \$350.00 of her security deposit on 4 December 2012. I asked the tenant if she knew what date was set out on the cheque. She did not. The tenant testified that she was not provided with the invoice for cleaning and that it did not come with the cheque.

Analysis

Moving Costs

In this case, the tenant alleges that she was wrongfully induced into entering into the tenancy agreement by untrue statements by the individual landlord that were made prior to the formation of that agreement. The tenant seeks compensation in the amount of her moving costs. The tenant admits that she had knowledge of cigarette smokers living in the residential property on the day that the tenant entered into the tenancy agreement; however, the tenant said that she felt like she had no choice but to enter into the tenancy and tenancy agreement at that point. I find that the tenant knowingly entered into the tenancy agreement with the knowledge that smokers lived in the building.

Pursuant to section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into. Although the definition of "tenant" in section 1 of the Act includes a prospective tenant where the context requires, there are limited provisions in the Act where the context does require the use of that inclusive definition. In particular, that provision was brought in to give effect to section 15 of the Act that prohibits certain fees being levied on prospective tenants. I find, for the purposes of determining compensation for a breach of the Act or the tenancy agreement in this case, the extension to "prospective tenants" does not apply as the purpose of that application is limited to section 15 of the Act.

The tenancy agreement is dated 25 March 2012. The tenant testified that the agreement was actually entered into on 30 March 2012. In this case, I prefer the contemporaneous written documentation and find that the tenancy agreement was entered into on 25 March 2012 before the tenant began occupation of the rental unit.

I find that both parties understood that the agreement was to be formalized in writing in this tenancy agreement. Until the time the written tenancy agreement was signed, there was only an agreement to agree and not an enforceable tenancy agreement. Thus, the tenant did not have rights under the Act or tenancy agreement before 25 March 2012. Any misrepresentation (innocent or otherwise) that may have existed prior to the tenancy agreement's signing was resolved by the clear terms of the tenancy agreement that set out that smoking is permitted in the building and the landlord GB's statements regarding the existence of a smoker next door. Accordingly, there is nothing in the Act or tenancy agreement that allows for the tenant to receive compensation for the alleged untrue statement.

The tenant's claim for recovery of her moving costs is dismissed without leave to reapply.

Compensation for Loss of Bedroom and Replacement Mattress

The tenant seeks compensation for water intrusion and a mould smell that she alleges caused the loss of use of her bedroom and caused damage to the tenant's mattress.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

The only water found in the rental unit was within the light fixture in the bedroom. Neither party was able to identify a source of the water. The landlords conducted an extensive investigation using various tradespersons to find the source and no source was found. I put no weight in the tenant's unproven allegation that these tradespersons were providing inadequate service based on their connection to the landlords. I find that the investigation conducted by the landlords discharged their obligations pursuant to subsection 32(1) of the Act.

The landlords testified that no other occupants of the rental unit experienced the same issue. I have not been presented with any evidence that allows me to determine where the source of the water was located. I find that whatever the source of the water, it was specific to this tenancy. As such, I find that the cause of the water had something to do with the specific way in which the tenant used the rental unit and thus it is not compensable.

The tenant's claim for compensation for her mattress and loss of use of the bedroom is dismissed without leave to reapply.

Security Deposit

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

A term requiring professional carpet cleaning at the end of a tenancy is enforceable under the Act.

In this case the tenant specifically signed an authorization allowing the landlords to retain \$100.00 from her security deposit. It is immaterial that the "balance due landlord" box was not filled out as all figures were there to understand the charge. I interpret the annotation "*not in agreement for carpet cleaning as proof of cleaning prior to move in was not supplied*" to be a conditional acceptance of the deduction, that is the deduction is permitted on proof that the carpets in the rental unit were professionally cleaned at the beginning of the tenancy. I accept agent JB's testimony with respect to the landlords' business records and I find that the landlords sent the receipt as proof of the prior cleaning on 14 November 2012 with the cheque for the balance of the return of the tenant's security deposit. I find that the landlords returned the balance of the security deposit on 14 November 2012, the date of the cheque. For the purposes of section 38 the relevant date is when the landlords returned the security deposit and not when the tenant received that money.

By receiving the tenant's conditional authorization to retain amounts from the security deposit, complying with the condition by sending the invoice, and returning the balance of the tenant's security deposit within fifteen days of the date the tenancy ended, the landlords have discharged their obligations pursuant to section 38 of the Act. The tenant is entitled neither to return of the balance of her security deposit nor to compensation pursuant to subsection 38(6).

The tenant's claims in relation to the security deposit are dismissed without leave to reapply.

Filing Fee

As the tenant has been unsuccessful in her application, she is not entitled to recover her filing fee from the landlord.

Conclusion

The tenant's claim is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 29, 2015

Residential Tenancy Branch

