



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This was a hearing with respect to the tenants' application for a monetary award and the return of the security deposit. The hearing was conducted by conference call. The named tenant and the landlords called in and participated in the hearing.

Issue(s) to be Decided

Are the tenant's entitled to a monetary award and if so, in what amount?
Are the tenant entitled to the return of their security deposit, including double the amount?

Background and Evidence

The rental unit is a residence in Vancouver. The tenancy began August 15, 2014. The monthly rent was \$1,500.00. The tenants paid a security deposit of \$750.00 and a pet deposit of \$750.00 at the start of the tenancy. I was not provided with a copy of a tenancy agreement; according to the parties, rent was payable on the 15th of each month. The tenancy ended in February, 2015. The tenant testified that they moved out of the rental unit because of the extensive mould. The tenant said she noticed the mould in mid-January and contacted the landlord. At the end of January the tenants asked to be released from the tenancy agreement. The tenants moved out of the rental unit on February 26th. The landlord did not deposit the tenant's rent cheque for the month commencing February 15th. There was a move-out inspection on February 28th. At the move-out inspection the landlord returned the sum of \$750.00 to the tenant. By letter to the tenants dated March 4, 2015 the landlords told the tenants that they would not receive a credit for the rent for February 15 to 28, 2015. The landlords said:

The rent cheque for Feb 15, 2015 was not deposited. Considering your move out date is March 1, 2015, half a month's rent is \$750. The rental deposit we

received when you moved in was \$750 as a damage deposit and \$750 as a pet deposit. \$750 was returned to you on February 28, 2015 at the move out inspection

The tenant claimed that due to the extreme mould condition in the rental unit the tenants' goods were damaged. The tenants claimed for the cost of damaged goods and expenses to deal with the mould. The tenants' claim as set out in a monetary order work sheet was as follows:

• Damage deposit (doubled):	\$1,500.00
• New mattress:	\$621.60
• Kick boxing gloves, shin gear:	\$160.00
• Air purifier:	\$100.00
• Dump fees:	\$28.00
• Mould disinfectant:	\$8.99
• Spare bedroom mattress:	\$100.00
Total	\$2,518.59

The tenants submitted photographs of what was said to be mould that formed on several locations in the house and as well on mattresses and some sports equipment. The tenants included receipts for some expenditures, including the purchase of a mattress. The tenant said that the rental unit was defective; it was cold and damp and there was a moisture problem that caused the mould. The tenant submitted that the landlord should be responsible for the tenants' losses.

The tenant testified that she gave the landlord her forwarding address in a letter in February. The tenant did not submit a copy of the letter as evidence. I note that the letter sent by the landlords to the tenants on March 4th was addressed to the street named in the tenant's application as their address, but to an incorrect house address on that street.

The landlords denied that the mould damage was their responsibility. The landlord said that in January the tenant complained that the house was cold and the landlord arranged for an insulation contractor to come to the house on January 27th to install additional insulation in the roof and walls of the house. The landlord said that if there was a mould problem it was created by the tenants' failure to allow adequate ventilation and keep the temperature at acceptable levels.

The landlord has not commenced an application to claim a monetary award for unpaid rent for February or to request an order to retain the tenant's security deposit.

Analysis

The tenant has claimed that the tenants were forced to move out of the rental unit due to a mould problem. The tenant informed the landlord of a problem by telephone in mid-January. The tenant did not provide evidence that there was any problem before then and the tenants did not submit any evidence of written or oral complaints or requests for repairs before January. The landlord responded to the request that the house was cold by having more insulation installed. I find that the tenants have not shown that the damage to their personal belongings was due to any negligence, fault or neglect on the part of the landlord and I find that the landlord is not liable for the tenant's loss for expenses to replace and dispose of mattresses and other items. The tenants did not make any written request to the landlord to investigate or treat the alleged mould problem and I find that in the absence of a written request to have the landlord perform repairs, the tenants are not entitled to compensation for their expenses to deal with a mould issue. Further, I am not satisfied on the evidence that the mould was caused or created by some flaw in the rental property and was not due to the tenants' use of the rental property or their failure to heat, ventilate or clean the rental unit.

With respect to the tenants' claim for the return of the security deposit, the landlords returned \$750.00 to the tenants on February 28th and advised the tenants that they would keep the remaining \$750.00 on account of rent due for a half month of February. The tenants did not consent to the landlord's retention of the deposit and did not authorize the landlord in writing to keep the deposit. The landlords have not applied for a monetary award for unpaid rent for February and they have not applied to claim the security deposit.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant testified that she provided the landlord with her forwarding address in writing and base on the fact that she received the landlord's letter sent to her new address on March 4, 2015 I am satisfied that the tenants provided the landlord with her forwarding address in writing.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$1,500.00. The other claims by the tenants are dismissed without leave to reapply.

Conclusion

The tenants' are entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,550.00 and I grant the tenants a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced 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: October 02, 2015

Residential Tenancy Branch

