



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on April 14, 2009 with a copy of the Application and Notice of Hearing. The landlord failed to collect this package but is still deemed to have been served Notice of this Hearing five days after posting. I find that the landlord was properly served pursuant to s. 88 and 90 of the *Act*.

The tenant appeared, gave her testimony, was provided the opportunity to present her evidence orally, in written form, documentary form and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to any compensation from the landlord?
- Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy started on March 01, 2009. Rent was \$550.00 per month payable on the 1st of each month. The tenant paid a security deposit of \$250.00 on February 19, 2009. The tenant viewed the property prior to moving in and had some concerns about areas

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in the rental unit that needed to be repaired. The landlord told the tenant that he had three other people waiting to take the unit and as she needed a place quickly she agreed to move in. The landlord did not provide the tenant with a copy of the tenancy agreement but she believed that this was a short term tenancy as the landlord wanted to use the rental unit for orchard workers in the summer months. The landlord and tenant did not complete a move in condition inspection report but did do a walk through of the rental unit. The landlord told the tenant he would replace a burner on the stove and the fridge and replace the lock on the front door.

The tenant states that she could not move into the unit on March 01 as there was so much cleaning and decorating to be done. She spent five days from March 04 to March 09, 2009 cleaning the unit. The tenant has provided photographic evidence to show areas of the rental unit that are in need of repair and cleaning. The front door lock had to be replaced as the wood around the door did not hold the lock catch in place securely. The landlord carried out this repair. The tenant had to wash the walls three times to clean the nicotine stains. The screen door was falling apart; there is a mouse problem with evidence of mice droppings in the unit; the unit needed to be redecorated and the tenant found many areas of wet rot on the walls, water damage, condensation and moisture; large areas of the dry wall were falling off due to this; the tenant also had concerns about the electrical system and heaters; the oven was extremely filthy. After cleaning the unit the tenant decided it was not fit to live in due to the mould and wet rot. The tenant spoke to the landlord to inform him she was moving out and returned her keys to him. The tenant states the landlord disagreed that the place was unfit to live in.

The tenant wrote to the landlord on March 20, 2009 giving him formal notice she had moved out and providing him with her forwarding address. The landlord returned the tenants security deposit on or about March 31, 2009.

Analysis

The tenant did view the property prior to moving into the rental unit and this was her opportunity to ask the landlord to carry out repairs and decoration of the rental unit. When the tenant noticed the wet rot, condensation and other repairs she had an opportunity to ask the landlord in writing to carry out these repairs. As the tenant did neither of these I find that she willingly entered into an agreement with the landlord to rent the unit.

A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and make it suitable for occupation by a tenant. As the landlord knowingly rented out the unit in an unfit state of decoration and repair he must bare some of the consequences for this.

The tenant informed the landlord on March 09, 2009 that she was moving out and handed back the keys to him. The tenant wrote to the landlord on March 20, 2009 to provide him with formal notice and her forwarding address. In the absence of any evidence from the landlord; I find that as the tenant did not request the landlord to carry out repairs or decoration that she must also bare some of the responsibility for this matter. Therefore, I find that the tenant is entitled to recover half of the rent for March, 2009 in compensation for the cleaning she carried out in the rental unit and distress for moving again of **\$275.00**.

The tenant is partial successful with her application. I find she is entitled to recover her filing fee of **\$50.00** from the landlord for this application.



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Conclusion

A Monetary Order in the amount of **\$325.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount of the order is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 27, 2009.

Dispute Resolution Officer