



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenant for a Monetary Order for compensation for damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

At the beginning of the hearing an issue was raised about whether the Landlord was properly named as a party in these proceedings. The Landlord is the son of the owners of the rental property and he admitted that the owners knew about these proceedings and authorized him to act on their behalf. Section 1 of the Act defines a Landlord in part as the owner of the rental unit the owner's agent or another person who, on behalf of the Landlord permits occupation of the rental unit under a tenancy agreement." Consequently, I find that the Landlord is an agent of the owners and is properly named as a party to these proceedings.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation for damages and if so, how much?

Background and Evidence

This tenancy started on June 1, 2008 and ended on July 31, 2008. Rent was \$650.00 per month. The Tenant said that when she viewed the rental unit, it was very dirty and smelled strongly of cat and/or dog urine. The Tenant said she agreed to rent the suite provided that the Landlord cleaned it and the carpets. The Tenant claimed that when she moved in, the Landlord had done little cleaning and the carpets had only been vacuumed. The Tenant said a few days later the Landlord hired someone to steam clean the carpets but the equipment was inadequate and tended to make the smell and her allergic reactions to pet dander worse. The Tenant also claimed that she spent 4 hours per day for 7 days cleaning the rental unit. Consequently, the Tenant now seeks to have the rent she paid for June 2008 refunded to her and to be compensated \$420.00 for her time cleaning the rental unit.

On June 8, 2009, 2 basement suites including the Tenant's suite was flooded as a result of a sewer back up. The Tenant said the Landlord told her she would have to find

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somewhere else to stay until the unit could be repaired which they estimated would take until July 1, 2008. The Tenant claimed that the Landlords refunded her rent for the period June 9 – 30, 2008. The Tenant said that when she returned on or about July 1, 2008, the rental unit was still not repaired. In particular, sections of water damaged gypsum board were removed as well as the carpeting and cupboards. The kitchen appliances were unplugged and put in the middle of the kitchen. The Tenant claimed that the bathroom toilet was also plugged and despite a number of requests to the Landlord to fix it nothing was done and it remained unusable for the entire month.

The Tenant said she did not pay rent for July 2008, however the Landlord only charged her for a half of a month's rent and in payment kept her security deposit. The Tenant said she did not give the Landlord written authorization to keep her security deposit. Consequently, the Tenant sought to be reimbursed \$162.50 for July "rent" as well compensation of \$100.00 for the loss of use of her toilet for the month.

The Tenant claimed that she could not make meals in the rental unit during the month of July and sought compensation of \$930.00 for eating meals out. The Tenant admitted that the refrigerator and stove could have been moved and plugged back into the electrical outlets, however, she claimed that the refrigerator was dirty and that she found a rat in the rental unit and did not want to store food there.

The Tenant also claimed that as a result of the flooding many of her belongings were damaged and could not be salvaged. The Tenant estimated the total cost of these belongings at \$2,750.00. The Tenant said that she was advised by the Landlord in June 2008 to store her belongings in the garage but when she returned for them in July 2008, she discovered that her mattress, box spring, 2 large wooden dressers and 2 mahogany tables were missing. The Tenant said that the Landlord's parents told her that the insurance company had taken them. The Tenant argued that the Landlord's parents had passed off her belongings as theirs and were compensated by their insurer for her belongings.

As a result of all of the foregoing matters, the Tenant said she suffered emotional trauma and stress and claimed compensation of \$650.00.

The Landlord said that there was no agreement with the Tenant to clean the suite at the beginning of the tenancy. In particular, the Landlord said he told the Tenant she would have to take it "as is." The Landlord denied that there were previously pets in the rental unit or that he hired anyone to clean the Tenant's carpet in June. The Landlord also claimed that he told the Tenant at the beginning of the tenancy that she needed to have her own insurance in case something happened.

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The Landlord said that when the rental unit was flooded, he told the Tenant that she would have to move out by the end of June 2008 because he estimated it would take 6 months until the unit would be repaired. The Landlord claimed that the Tenant showed up unexpectedly at the beginning of July and plead with him to stay for another month because she could not find another place to stay. The Landlord said he initially agreed to let the Tenant stay for a week and at her further urging, agreed to allow her to stay until the end of July. The Landlord argued that the Tenant agreed to pay \$325.00 for July 2008 as rent, storage and for delaying the insurance company from starting repairs.

The Landlord argued that the Tenant was aware that the rental unit was undergoing repairs when she asked to stay there in July 2008 and claimed he was not aware that the toilet was plugged. The Landlord claimed that his parents (who also had a basement suite) had been compensated by their insurer for damaged possessions but only the ones belonging to them.

Analysis

Section 32 of the Act says that a Landlord is responsible for ensuring that the rental unit meets health, safety and housing standards established by law and that it is reasonably suitable for occupation by the Tenant. In the absence of a condition inspection report or photographs, I find that there is insufficient evidence that the rental unit required 28 hours of cleaning at the beginning of the tenancy and that part of the Tenant's application is dismissed. For similar reasons, I find that there is insufficient evidence to support the Tenant's claim for a reimbursement of her June 2008 rent and that part of her application is dismissed.

Section 21 of the Act says that unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent. I find that neither party agreed in writing to apply the Tenant's security deposit to rent (or any other matter) and as a result, I find that the Tenant did not pay rent for July 2008. Consequently, the Tenant is not entitled to be reimbursed rent for July 2008. For similar reasons, I find that the Tenant is not entitled to be compensated for a loss use of the toilet in the rental unit. Furthermore, given that the Landlord denied that the Tenant advised him about this problem there is insufficient evidence to find that the Tenant is entitled to compensation.

Section 7(2) of the Act says that a party who suffers damages must do whatever is reasonable to try to minimize their losses. I find that the Tenant did not take reasonable measures to minimize her food expenses for July 2008 and in particular find that there is no evidence that the refrigerator and stove in the rental unit could not be used. The Tenant claimed that the real reason she ate out was because there was a rat in the

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rental unit and she did not want it getting into her food. However, I find as a matter of common sense that food could have been safely stored in the refrigerator once it was cleaned out. Consequently, this part of the Tenant's claim is also dismissed.

In the absence of a written tenancy agreement, I find that there is little evidence to suggest that it was a term of the Parties' tenancy agreement that the Tenant had to have her own insurance. As a result, I find that the Tenant is entitled to recover damages to her personal belongings provided that she can prove them. The Tenant provided many photographs of the rental unit in July 2008 showing the repairs and bags of garbage but only a few photographs of miscellaneous items in boxes and a computer on a desk. None of the Tenant's photographs show any of the damaged items for which she now makes a claim. The Tenant has also provided no documentary evidence to support her estimate of the cost of replacing the damaged items in question (aside from a statement that a new bed at IKEA would cost \$1,000.00). Consequently, I find that there is insufficient evidence to support the Tenant's claim for most of the possessions she has claimed were damaged.

I find on a balance of probabilities that the Tenant had a bed, 2 tables and 2 dressers stored in the Landlord's garage and that they were removed by or with the consent of the Landlord. However, the Tenant has only provided evidence to support the replacement cost of the bed and as a result, I award her \$1,000.00. I do not find the Proof of Loss provided by the Landlord to be helpful as it only shows that approximately \$5,500.00 was paid to his parents for a loss of contents and does not show what those contents were.

I find that there is no evidence to corroborate the Tenant's claim that she suffered emotional trauma or stress and as a result, this part of her claim is dismissed. The Tenant sought \$25.00 for a "Rat Deterrent" however there is no evidence in support of this claim and it is dismissed. The Tenant also sought to recover \$20.00 for photograph expenses. I find that most of the photographs were duplicates and therefore award the Tenant only \$10.00 for this expense. As the Tenant has only been partially successful in this matter, I find that she is entitled to recover one-half or \$25.00 of her filing fee. In summary, the Tenant has made out a claim as follows:

Missing bed:	\$1,000.00
Photograph expense:	\$10.00
Filing fee:	<u>\$25.00</u>
Total:	\$1,035.00



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Conclusion

The Tenant's application is allowed in part. A monetary order in the amount of **\$1,035.00** has been issued to the Tenant and a copy of the Order must be served on the Landlord. If the amount 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: July 02, 2009.

Dispute Resolution Officer