



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, RPP, FF, O

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 the Tenant confirmed that she was no longer seeking an order that the Landlord return her personal property.

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 May 15, 2009 and ended on June 28, 2009. Rent was \$750.00 per month payable in advance on the 15th day of each month. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

The Tenant claimed that approximately a week after she moved in, former tenants tried to break into the rental unit and she discovered that another tenant had a key to the rental unit. The Tenant said she didn't feel comfortable with someone else having a key and the Landlord would not do anything about it so on May 28, 2009 she gave her written notice she was ending the tenancy as of June 30, 2009. The Tenant said she gave her written notice to the upstairs tenant because she believed she was acting as an agent for the Landlord. The Tenant admitted that she did not give her written notice to the Landlord.

The Tenant said that at the beginning of June 2009 she found a snake in the garage of the rental unit which she believed was poisonous. The Tenant said the upstairs tenant told her that there were more snakes around as well. The Tenant said the Landlord did not seem concerned about it when she called to advise her about it. The Tenant said she and her children were afraid so she left and stayed for a period of time with her mother and with her ex-spouse until June 26, 2009. Consequently, the Tenant sought additional accommodation, food and gas expenses.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Tenant also claimed that she did not think that she should have to pay rent for the last two weeks of June 2009 but agreed in an e-mail to the Landlord keeping her security deposit for rent for the period June 15 – 30, 2009. The Tenant said instead the Landlord cashed her rent cheque for June 15 - July 15, 2009 at Money Mart and it was returned for non-sufficient funds. The Tenant claimed that Money Mart demanded that she satisfy the amount of the cheque. Consequently, the Tenant sought reimbursement of this amount from the Landlord.

The Landlord said the Tenant was never advised that anyone else in the rental property was acting on her behalf and denied that the upstairs tenant had any authority to act on the Landlord's behalf. The Landlord said she had only the Tenant's verbal notice on June 11, 2009 that she intended to end the tenancy at the end of June 2009. The Landlord said she never agreed that the Tenant could pay rent only to the end of June 2009 but rather agreed that if she kept the Tenant's security deposit then the Tenant would owe a balance of \$375.00. The Landlord said the Tenant paid no rent for the period June 15 – July 15, 2009 and never contacted the Landlord so as a result, the Landlord cashed the Tenant's cheque. The Landlord claimed that she paid Money Mart \$750.00 in satisfaction of the Tenant's returned cheque.

The Landlord also said that the Tenant advised her of a snake in the garage on June 13, 2008 and on June 15, 2009 the Landlord inspected the property but could find no other snakes. The Landlord said that on the advice of an exterminator, she put down traps. The Landlord called the Tenant on June 17, 2009 to advise her that there was no sign of any snakes. On June 22, 2009, an Inspector from the Fraser Health Authority inspected the rental property and found no evidence of snakes.

The Landlord argued that the Tenant overreacted and that it was unreasonable for her to move out given that only one snake was found outside of the rental unit in the garage. The Landlord argued that the Tenant had not incurred expenses for accommodations as she had only provided un-cashed cheques to her mother and ex-husband as evidence. The Landlord also argued that the Tenant would have incurred food expenses whether she lived in the rental unit or not.

Analysis

Section 45(1) of the Act says that a Tenant of a periodic (or month to month) tenancy must give one clear month's notice that they are ending the tenancy. Section 52 of the Act says that the Notice must be given in writing. I find that there is no evidence that the upstairs tenant was authorized to act on behalf of the Landlord or that the Tenant was advised by the Landlord that she could deal with anyone else on behalf of the Landlord. Consequently, I find that the Tenant did not give her written notice to the Landlord.

Section 45(3) of the Act says that if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the Tenant gives *written* notice of the failure, then the Tenant may end a tenancy without further notice. Although the Tenant argued that she should not have to pay rent because of her concern about snakes in the rental property, I find that she did not give the Landlord written notice that she was in breach of a material term of the tenancy agreement and was not entitled to end the tenancy early.

As a result, I find that the Tenant did not give written notice to the Landlord and was therefore responsible for rent for the period June 15 – July 15, 2009 and is not entitled to recover the amount of the cheque for \$750.00 which was cashed by the Landlord. As the Landlord has paid back those funds to Money Mart, the Landlord will have to apply for an order to recover the unpaid rent from the Tenant.

Section 32 of the Act says that 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 that makes it suitable for occupation by a tenant. The Tenant claims that the Landlord did not take her concerns seriously and out of concern for the safety of herself and her children she left the rental unit she was satisfied there were no snakes. The Landlord claims that Tenant acted unreasonably in that there was no reason for her to leave the rental unit.

I find that the Landlord should have acted more quickly to investigate the Tenant's complaint but instead waited for 2 days to do so. Thereafter, I find that the Landlord took reasonable steps to investigate the rental unit to ensure that there were no snakes. Consequently, I find that the Tenant is entitled to be compensated for 2 days of expenses for which she stayed in other accommodations. The Tenant said she spent a few days with her mother and in support provided an un-cashed cheque for \$100.00. I find, however, that there is no evidence as to how many days this was intended to be in payment for. Consequently, I find that the Tenant is entitled to recover an amount equivalent to pro-rated rent for 2 days or \$50.00 ($\$750.00 / 30 \times 2$).

I find that the Tenant has also not shown that she incurred more food expenses than she normally would have because she had to live elsewhere for 2 days. I find that the Tenant probably did incur additional gas expenses to drive to and from Abbotsford and award her the amount of \$20.00. As the Tenant has only been partially successful in this matter, she is entitled to recover one-half of the filing fee or \$25.00.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

A monetary order in the amount of **\$95.00** has been issued to the Tenant and a copy of it 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 24, 2009.

Dispute Resolution Officer