



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR CNR MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy, as well as a monetary order and recovery of the security deposit. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial compensation of the monetary claim.

The tenant and two agents for the landlord participated in the teleconference hearing. At the outset of the hearing the parties stated that the tenant had already vacated the rental unit, and I therefore dismissed the portions of their applications regarding the notice to end tenancy and an order of possession.

The tenant submitted documentary evidence after the teleconference hearing had concluded. I did not admit or consider this evidence in my decision in this matter.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on May 1, 2009, with monthly rent of \$700 payable in advance on the first day of the month. On April 15, 2009 the tenant first viewed a suite on the second floor, but the tenant said she wanted to live on the third floor, so the building

manager also showed the tenant the rental unit in question, which was located on the third floor. On April 28, 2009 the tenant paid the landlord a security deposit of \$350. The parties agreed that when the tenant moved in on May 1, 2009, the suite had not been cleaned or repaired. The tenant submitted photographs depicting dirty or damaged cupboards, windows, curtains, linoleum and walls throughout the rental unit. A large tile was missing from the bathroom tub surround. The landlord agreed that the photographs accurately depicted the condition of the rental unit on May 1, 2009.

The rental unit was painted on May 19, 2009 and the bathroom linoleum was replaced on May 23, 2009. On May 26, 2009 the building manager installed new blinds in the rental unit. The tenant did not pay rent on June 1, 2009, and on June 3, 2009 the landlord served the tenant with a notice to end tenancy for unpaid rent. On June 10, 2009 the tenant provided the landlord with her written forwarding address. On June 15, 2009 the tenant vacated the rental unit. The landlord re-rented the unit as of July 1, 2009.

The tenant's evidence on her application was as follows. The landlord did not tell the tenant that the rental unit would not be ready for her to move in on May 1, 2009. If the landlord had done so, the tenant would have moved in later. The tenant had hired a moving company for May 1, 2009 and she had to pay them for extra time because there was no key to lock the elevator.

The tenant stated that she had to clean the apartment for at least eight hours on May 2 and 3, 2009, and she talked to the building manager about getting paid for her cleaning. During the first two weeks of May the building manager was working on renovating another rental unit on the third floor. The tenant enquired several times about her rental unit, and the building manager replied that she was "pissing [him] off." On May 8, 2009 the building manager was singing loudly between 10 am and 1 pm, and when the tenant asked him to be quiet, he responded, "Don't you like my Chinese songs?" The tenant saw the building manager later that day and he was drunk.

On May 19, 2009, the painters were taking a lunch break and the tenant decided to use

the available paint and supplies to paint the inside shelves of the kitchen cabinets. The tenant then suffered an allergic reaction because of the paint. On May 23, 2009 the glue used to install the new bathroom linoleum made the tenant sick. She vomited twice, and then went to see a doctor.

On May 26, 2009, the building manager installed new blinds when the tenant was not home. The tenant believed that while he was installing the blinds, he scratched the tenant's new printer. Later that day, when the tenant returned home, the building manager asked the tenant to sign a tenancy agreement and a move-in inspection report. The tenant refused to sign them, and the building manager insulted the tenant.

The tenant decided not to pay June's rent and looked for a new place to live, because of the "unbearable circumstances." The tenant has claimed the following monetary compensation: (1) return of her security deposit; (2) \$350 for moving expenses to move into the rental unit; (3) \$250 for moving expenses to move out of the rental unit; (4) \$15 for BC Hydro reconnection fee; (5) \$180 for 8 hours of cleaning and 1 hour of painting; (6) \$6.69 for cleaning supplies; (7) \$86.52 for expenses related to pursuing dispute resolution; and (8) \$3000 for "moral compensation."

The landlord's response to the tenant's application was as follows. The landlord told the tenant that the unit on the third floor would not be ready on May 1st and they would have to do a lot of work after she moved in. The repair person contracted by the landlord had been in a car accident and was not able to do the repairs right away. The key for the elevator had been lost, and the building manager told the movers just to prop open the elevator door. The landlord never authorized the tenant's cleaning and painting. The landlord had no idea what caused the tenant's allergies, but the tenant was told to leave the bathroom alone while the silicone for the new linoleum dried. The landlord disputed the tenant's claim in its entirety.

The landlord's evidence on their application was as follows. The tenant did not pay rent for June 2009. When the tenant vacated she did not clean the unit. The tenant continually bothered the building manager, about 10 times a day, about repairs to her

unit. The tenant damaged the bathtub. The landlord has claimed the following monetary amounts: (1) \$700 for June 2009 rent (the landlord had originally included loss of revenue for July 2009, but they re-rented the unit for July); (2) \$120 for cleaning; (3) \$80 for carpet cleaning; (4) \$20 for new bathtub paint; (5) \$5000 for harassment; and (6) \$10,000 for “discrimination of Chinese songs/culture.”

The tenant’s response to the landlord’s claim was as follows. The tenant cleaned the unit and took photographs to prove that she left the rental unit in a clean condition. The landlord is lying about bugging him ten times a day. The tenant did not damage the bathtub. The tenant was not complaining about the building manager singing in Chinese, just that he was too loud.

Analysis

In regard to the tenant’s claim, I find that the unit was not ready for move in on May 1, 2009, and the landlord delayed for two to three weeks in carrying out repairs because their regular contractor was unavailable. The landlord ought to have informed the tenant that the rental unit would not be ready on May 1st, and ought to have considered hiring another contractor. I find that the tenant is entitled to some compensation for her loss of quiet enjoyment, in the amount of \$200.

I am not satisfied that the tenant is entitled to compensation for cleaning, painting or cleaning supplies, as she did not have prior authorization from the landlord to carry out that work. I further find that the tenant did not provide sufficient evidence to establish that her move-in expenses were greater because of the lack of an elevator key. The tenant did not provide sufficient evidence to establish that the landlord caused her allergic or other reactions to the paint and silicone. The tenant chose to withhold her rent for June and to move out, and she is therefore not entitled to her moving out costs or the BC hydro reconnect fee. The only cost related to pursuing dispute resolution to which the tenant may be entitled is that of the filing fee for the cost of her application, not costs for photographs, mailing, or obtaining a doctor’s note. I therefore dismiss the remainder of the tenant’s application.

In regard to the landlord's application, I find that the landlord is entitled to the rent for June 2009. I am satisfied that the tenant's photographs demonstrate that she left the rental unit in a clean condition, and I deny the landlord's claim for cleaning costs. However, the landlord is entitled to the costs for carpet cleaning, as it is a standard requirement for tenants to have the carpets professionally cleaned when they vacate. I am not satisfied that the landlord proved that the tenant damaged the bathtub. Finally, I find that the landlord has provided little or no evidence to support their monetary claims for harassment or discrimination. I therefore find the landlord is entitled to \$780, and I dismiss the remainder of the landlord's claim.

As both applications were only partially successful, I decline to award either party recovery of their filing fee.

Conclusion

After deducting the tenant's award of \$200, the total amount to which the landlord is entitled is \$580. I order that the landlord retain the security deposit of \$350 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$230. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated August 5, 2009.