

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking return of one month's rent and her security deposit in double on the grounds that the landlord breached a material term of the rental agreement making it untenable for her to move in to the rental unit. The tenant also sought monetary compensation for cleaning the rental unit and recovery of the filing fee for his proceeding.

As a preliminary matter, the tenant had not received a copy of the landlord's evidence package which was received at the Residential Tenancy Branch on December 11, 2009, late of the five business days in advance as required under the Rules of Evidence. Therefore, the hearing proceeded as without the landlord's package, although the agent gave some overlapping evidence orally.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to Monetary Order for return of the rent, double security deposit, filing fee and cleaning.

Background and Evidence

This tenancy was set to begin on July 1, 2009 under a fixed term rental agreement to June 30, 2010. Rent was to be \$950 per month and the tenant paid a security deposit of \$475. The rental agreement was signed on June 15, 2009.

During the hearing, the tenant gave evidence that she had made it abundantly clear to the landlord's agent on viewing the rental unit that she would enter a tenancy only if a window with a gap between top and frame was repaired. She said it was of fundamental importance to her as she had lived in the upper floors of a high-rise before, and was aware of the higher winds and drafts. Therefore, the tenant wrote into the agreement that the owner would paint the rental unit, repair the window and clean the drapes and carpet. The agreement was subsequently signed by the landlord's agent.

The tenant stated that when she attended the move-in condition inspection with another agent on June 28, 2008, the gap had not been repaired and the suite appeared not to have been cleaned or painted and she stated that the agent agreed with her that such was the case.

While she had agreed to provide post-dated cheques at that meeting, she paid only for July out of serious concern that the landlord had not and would not repair and clean the rental unit as agreed.

In addition, the tenant had been left with a key to the apartment, but did not have a fob for the front door, mail box or laundry keys. Over the next few days, there were various communications between the agent and tenant over keys, cleaning and repairs, but matters were not resolved.

While the tenant never moved in, she did clean the carpets and do considerable general cleaning.

The landlord gave evidence that he had a paid invoice from one service company showing that repairs had been done to a closet door, the sliding glass door and the toilet, but not the window gap.

Analysis

I find that by failing to remedy the window and to make certain that the tenant had all keys for the rental unit, the landlord was in breach of material terms of the rental agreement and the tenant was justified in declining the tenancy.

Therefore, I find that the landlord must return the rent for July 2009.

As to the security deposit, section 38(1) of the Act states that a landlord must, with 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address either return the security deposit or make application to claim on it, unless the tenant agrees otherwise.

Section 38(6) of the Act requires that, if the landlord does not comply with section 38(1), the landlord must repay the security deposit in double. As the deposit was not returned, I find that the tenant is entitled to double the security deposit.

As to general and carpet cleaning costs, I find that the tenant undertook this work without the prior consent of the landlord to reimburse her and I decline to award this part of her claim.

Thus, I find that the landlord owes to the tenant an amount calculated as follows:

July rent	\$ 950.00
Security deposit	475.00
To double the security deposit	475.00
Filing fee	50.00
TOTAL	\$1,950.00

Conclusion

Thus, the tenant's copy of this decision is accompanied by a Monetary Order for \$1,950.00, enforceable through the Provincial Court of British Columbia, for service on the landlord.