



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord has filed for an order of possession for unpaid rent and for monetary orders for unpaid rent, for compensation under the Act or tenancy agreement, to keep all or part of the security deposit and to recover the filing fee for the Application.

The Tenant applied for an order to cancel a 10 day Notice to End Tenancy for unpaid rent, for a monetary order for compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the parties agreed that the Tenant had already vacated the rental unit, and therefore, the issue of possession of the rental unit did not have to be addressed and it is dismissed.

Issues(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Is the Tenant entitled to the monetary compensation sought?

Background and Evidence

The parties entered into a written tenancy agreement which began on August 1, 2009, and was to last for a one year term. The Tenant and another person, who I will refer to as Tenant B in this Decision, agreed to pay the Landlord \$1,160.00 per month in rent. A security deposit of \$580.00 was paid on or about July 15, 2009. The tenancy agreement also contained a liquidated damages clause, in the amount of \$400.00, which the Tenants had to pay if they ended the tenancy before the end of the term. There are also fees charged for returned cheques and late payment of rent.

On or about March 4, 2010, Tenant B had apparently vacated the rental unit. The Tenant, Tenant B and the Landlord completed a form setting out that Tenant B was vacating the rental unit effective on March 31, 2010. The form also states, "The tenancy is to continue with [Tenant's name] remaining in the suite." The form is signed by the Tenant and Tenant B.

On or about March 23, 2010, the Tenant gave the Landlord a notice she was vacating the rental unit on April 30, 2010.

The Tenant provided the Landlord with two cheques for rent in April, each in the amount of \$580.00. On April 9, 2010, the Landlord was advised by its bank that the Tenant had put a stop payment order on one of the cheques.

The Tenant and the Landlord performed an outgoing condition inspection report on April 30, 2010. In the condition inspection report the Tenant signed and agreed the Landlord may retain \$1,149.00 (comprised of rent and fees of \$630.00, liquidated damages of \$400.00, a cleaning charge of \$24.00 and a carpet cleaning cost of \$95.00), out of the security deposit and the Tenant agreed to pay the outstanding balance not satisfied by the security deposit and interest.

The Tenant argued that her former roommate had not removed all her property from the rental unit and therefore she should be paying her share of the rent for April of 2010. The Tenant submitted a written statement in evidence claiming she was informed that Tenant B had been removed from the lease and that Tenant B was not supposed to be removed from the lease until a new roommate was found.

The Tenant also argued that Tenant B's mother had co-signed the tenancy agreement for both of them and that the Landlord should be pursuing the mother of Tenant B for rent.

The Tenant further alleged that the property manager for the building entered the rental unit to show the unit to a prospective renter, and then the manager removed a can of paint and a roller that belonged to the Tenant. The Tenant acknowledged that she had agreed to the manager accessing the rental unit to show it to potential new renters. The Tenant confronted the manager about removing the paint can and roller. The manager returned these the next day. However, the Tenant alleges that the manager entered the unit without her permission to return the paint can and roller.

The Agent for the Landlord testified that the manager had made a mistake when she removed the paint and roller. Apparently the brand of paint used in the building is the same as the brand the Tenant had in her unit, and the manager thought the Tenant had left the paint and roller out for the manager to return to the Landlord.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached the Act and the tenancy agreement.

The Tenant signed a document acknowledging Tenant B was vacating and agreeing the tenancy would continue with the Tenant in the suite. Any problem with Tenant B not removing her property should have been addressed at the time by the Tenant. She did not provide the Landlord any written notice that Tenant B had failed to remove some property.

Regardless, the Tenant agreed in writing the tenancy would continue with her in the suite and she became responsible for the entire rent for the month of April. The Tenant acknowledged this by initially giving the Landlord the total amount of rent in two cheques, however, she breached the Act and tenancy agreement when she put a stop payment on the cheque for half the rent for April when clearly she owed this money.

I also find there was insufficient evidence to show that Tenant B's mother had guaranteed the rent for both of the Tenants. Furthermore, any alleged guarantee would have been invalid once Tenant B was released from the tenancy by the Tenant and the Landlord.

The Tenant also signed the outgoing condition inspection report agreeing to pay the Landlord the rent due, the cleaning, the late and NSF fees, liquidated damages and to pay the outstanding balance not satisfied by the security deposit and interest. I find the Tenant is bound to adhere to these terms, as they are fair and reasonable. I do not accept the Tenant's testimony she only agreed to allow the Landlord to keep the

security deposit. I found that during the course of the hearing the Tenant often gave vague, contradictory or misleading evidence in regard to these matters. The Tenant is cautioned that in any future legal proceedings it is best to adhere to the truth, even if the truth does not favour her case. It is also clear that the Tenant has little understanding of the laws regarding tenancies, and therefore, I enclose a copy of a guidebook for her future reference.

Therefore, subject to the offset below for the Tenant's claim, I order the Tenant to pay the Landlord **\$619.00**, comprised of the following: rent and fees of \$630.00, liquidated damages of \$400.00, a cleaning charge of \$24.00, a carpet cleaning cost of \$95.00 and the \$50.00 the Landlord paid for the Application, less the \$580.00 security deposit which the Landlord shall keep.

As to the Tenant's claim against the Landlord, I find that the manager breached the Act by entering the rental unit without authority when she returned the paint can and roller. The Agent for the Landlord acknowledged this mistake. While this may have been a mistake, I find the Tenant experienced a loss of quiet enjoyment due to this breach, which was equivalent to one half day of rent. I award the Tenant **\$19.00** for this loss, subject to the offset below. The rest of the Tenant's claim is dismissed without leave to reapply, and since her Application had limited success, I do not award the Tenant any amount toward her filing fee.

Under the Act I apply the offset of the claims and order the Tenant to pay the Landlord **\$600.00** (\$619.00 - \$19.00 = \$600.00).

I grant the Landlord an order in these terms, which may be enforced in the Provincial Court of British Columbia.

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: June 03, 2010.

Dispute Resolution Officer