Dispute Codes Landlord: MNR, MNSD, MNDC, FF
Tenant: MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for a monetary order for unpaid rent or utilities and for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for return of the security deposit, and to recover the filing fee from the landlord for the cost of this application.

The parties each gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence.

A witness for the tenant was also available to give evidence, but was not called.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?
Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?
Is the landlord entitled to an order permitting the landlord to retain the security deposit in partial satisfaction of the claim?
Is the tenant entitled to return of the security deposit?

Background and Evidence

The parties testified that a tenancy agreement was signed on February 1, 2010 as a fixed term tenancy to run from March 1, 2010 to August 30, 2010, and then was to

continue as a month-to-month tenancy. A copy of the tenancy agreement was provided in advance of the hearing, and shows that rent in the amount of $800.00 is payable in advance on the 1st day of each month, that a $400.00 security deposit was paid on January 25, 2010, and the $200.00 pet damage deposit was not paid.

The tenant testified that she went to the unit on February 28, 2010 with a truck full of her belongings and friends to assist expecting to move in as had been agreed by the owner. When she arrived, she could not move in because the unit was not ready. She testified that the toilet was dirty, carpets were wet from cleaning, drywall dust was on the counters, floor, washer, dryer and all over the unit. There was no shower head or light fixtures, and the landlord had promised to have light fixtures and blinds prior to moving in. She further stated that a smell of marihuana emanated throughout the unit when the furnace came on, coming from the tenants' unit upstairs, and alot of traffic of people coming and going from that unit. She stated that she did not feel safe, and has a two year old child, and feels there should be something to protect her from that. She stated she spoke to the owner on the phone and advised that she could not put her belongings in a dirty unit and that she would not be taking possession. He responded that she had to because she had signed the tenancy agreement. She subsequently provided him with her forwarding address on March 1, 2010 in a letter requesting her security deposit be returned to her.

The landlord's agent testified that the tenant attended the unit to move in on February 27, 2010, not February 28, and he agrees that the suite was not ready. He stated that workers had fallen behind their schedule and that it was the owner, not this agent that told her she could move in early. He also stated that the unit was re-rented for April 1, 2010, and is claiming $800.00 for loss of rent for the month of March, 2010. He did not disagree that the other unit smells of marihuana, but states that he has no control over that; if he could stop all tenants from smoking marihuana, he would.

Analysis

In most instances, one party's violation of the *Act* does not excuse the violations committed by the other party, nor render the other party immune from liability for their own transgressions. However, in this instance, I find that provision of a rental unit suitable for occupation was a material term of the contract and it appears that the landlord's timing in preparing the suite was slightly off. It appears that the owner agreed that the tenant could move in early, and it is clear that there were some other tasks that needed to be finished. It was not up to the tenant to make sure that the landlord and the landlord's agent communicated about the move-in date; I find that the tenant had every reason to believe the unit would be ready when she arrived. Further, the tenant's claim that marihuana emanating from another suite is not denied by the landlord, and the tenant was not provided with that information prior to signing the tenancy agreement. I find that the tenant had every intention of moving in when given the green light to do so by the owner, as evidenced by the moving truck and helpers. I find that the seemingly minor delay on the part of the landlord held major consequences for the tenant, and that on February 27, 2010, the tenant had a valid basis to believe that the suite was not ready and would not be ready to move in. Therefore, I find that the tenant was justified in breaking the agreement, and the landlord is not entitled to the payment of rent.

Conclusion

For the reasons set out above, the landlord's application is dismissed in its entirety without leave to reapply.

I hereby order that the landlord return to the tenant the security deposit paid in the amount of $400.00. The tenant is also entitled to recovery of the $50.00 filing fee, and I grant the tenant a monetary order under Section 67 of the *Residential Tenancy Act* in the amount of $450.00. This order may be filed in the Provincial Court of British Columbia, Small Claims Division 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 19, 2010.

Dispute Resolution Officer