



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing was convened in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy for this ground level unit was from January 1 to December 31, 2011. Monthly rent was \$750.00, and a security deposit of \$375.00 was collected.

By way of letter dated January 6, 2010 (which the tenant acknowledged during the hearing should read: 2011), the tenant gave notice of her intent to end the tenancy effective January 31, 2011. However, it appears that the tenant's actual stay in the unit was limited to little more than 1 or 2 nights. As to her reasons for ending the tenancy, in her letter the tenant refers to the following:

- a strong smell of weed coming from down the hall to the point that I can't breathe as I have asthma and breathing problem;
- I don't feel safe as I can hear people talking right outside my window

Included in evidence submitted by the tenant is a photocopy of a Care Card showing her name and an expiry date she claims reads September 2010, and a photocopy of a Care Card showing her name and an effective date she claims reads February 2011.

The landlord testified that new renters were found for the unit effective February 1, 2011. The landlord also testified that the tenant's security deposit was repaid in full and

that the landlord did not apply to recover \$375.00 from the tenant pursuant to the “liquidated damages” clause in the tenancy agreement.

Evidence submitted by the landlord includes a copy of an e-mail from the landlord’s agent who dealt directly with the tenant at the start of tenancy, to the agent representing the landlord at the hearing. The e-mail reads in part as follows:

The tenant...claimed she was in a situation in which she needed to get into the unit before the first of the month.....Once the tenant moved in she let me know she was concerned with living on the ground level. She explained it was her first time living away from home and she didn’t feel comfortable living on the ground floor. She told me she was scared. She then asked me to meet with her and her mother at the building. At the meeting they both explained their concern for living on the ground level. They asked how could they get out of breaking the lease. I explained they would need to give a written notice and explain the situation. At that point I also explained that breaking the lease because they were scared of the ground floor is usually not a good enough reason because they knew well that it was a ground level unit when they came and saw the unit.....It was after all this that the tenant brought up the fact that she was going to move out because she was allergic to smoke and that was the reason she was going to move out.

As to smoking, the tenant stated that signage posted at the building instructs that no smoking is permitted. The landlord testified that tenants are not permitted to smoke tobacco products in common areas and new tenants are not permitted to smoke tobacco products in their units. The landlord further testified that tenants who smoked tobacco products in their units prior to the introduction of no smoking rules are permitted to smoke tobacco products in their units pursuant to the principle of “grandfathering.”

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 45 of the Act speaks to **Tenant’s notice** and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

During the hearing the tenant withdrew the aspect of her application concerning recovery of \$75.00 for the cost of carpet cleaning at the time of move in. The remaining aspects of the tenant's application and my findings around each are set out below:

\$750.00: *recovery of rent for January 2011.*

I note at clause 43 of the tenancy agreement, under the heading: **Smoking**, it is stated as follows:

The tenant agrees to the following material term regarding smoking:

- No smoking of any combustible material is permitted on the residential property, including within the rental unit.
- Smoking of tobacco products only is limited to within the rental unit.
- Smoking of tobacco products only is limited to the area described as [blank].

The tenancy agreement bears the signatures of both parties.

Based on the documentary evidence and the testimony of the parties, and in the absence of proper notice to end the tenancy, or evidence that the tenant gave written notice to the landlord of an alleged breach of a material term of the tenancy agreement before giving notice to end tenancy, or evidence such as, but not necessarily limited to, a note from a physician in support of her claim to "asthma and [a] breathing problem," I find on a balance of probabilities that the tenant has failed to meet the burden of proving that her reasons for early termination of the fixed term tenancy agreement are as claimed. In the result, this aspect of the application is hereby dismissed.

\$150.00: *cost of moving into the unit.*

Further to the findings set out immediately above, in the absence of any documentary evidence (receipts, for example) in support of this aspect of the claim, it is hereby dismissed.

\$150.00: *cost of moving out of the unit.*

Further to the findings set out almost immediately above, in the absence of any documentary evidence (receipts, for example) in support of this aspect of the claim, it is hereby dismissed.

\$450.00: *cost of rent for temporary accommodation.*

Further to the findings set out above, and in the absence of any documentary evidence (receipts, for example), I find on a balance of probabilities that the tenant has failed to meet the burden of proving that the landlord is responsible for her decision to move out of the unit, and that she has therefore established entitlement to compensation for alternate temporary accommodation. This aspect of the application is therefore hereby dismissed.

\$12.40: *change of address and new service for BC Hydro.*

While the tenant has submitted an invoice in evidence, I find on a balance of probabilities that she has failed to meet the burden of proving that her reasons for ending the tenancy are as claimed, and that the landlord should therefore bear responsibility for this cost. Accordingly, this aspect of the application is hereby dismissed.

\$24.95: *change of address and new service for internet.*

While the tenant has submitted an invoice in evidence, I find on a balance of probabilities that the tenant has failed to meet the burden of proving that her reasons for ending the tenancy are as claimed, and that the landlord should therefore bear responsibility for this cost. Accordingly, this aspect of the application is hereby dismissed.

\$50.00: *filing fee.*

As the tenant has not succeeded with her claim, the application to recover the filing fee is hereby dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

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*.

DATE: June 9, 2011

Residential Tenancy Branch