



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage or loss under the Act.

The tenants applied requesting compensation for damage or loss under the Act, an Order the landlord comply with the Act and filing fee costs.

Both parties were present at the hearing; although the landlord did not attend until 28 minutes after the hearing commenced. At the start of the hearing I introduced myself, the hearing process was explained, evidence was reviewed and the tenant was provided with an opportunity to ask questions about the hearing process. They presented affirmed oral testimony evidence and made submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

When the landlord entered the hearing she indicated she had forgotten to attend. The landlord was given a short summary of the discussion that had occurred to that point but was reminded it was her responsibility to attend a hearing at the scheduled start time, as the tenant had.

The landlord confirmed she had been served with Notice of the tenant's hearing; the tenant confirmed Notice of the landlord's hearing.

As the tenancy has ended consideration of Orders that the landlord comply with the act was not required.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$2,250.00 for loss of rent revenue?

Are the tenants entitled to loss of value of the tenancy in the sum of \$400.00?

Background and Evidence

The tenancy commenced on November 21, 2010, the parties agreed rent was due on the 18th day of each month. Rent was \$800.00 per month, but the parties had agreed to a rent deduction to \$750.00 for reason as that did not relate to the applications before me.

The parties agreed that this was a fixed term tenancy ending October 31, 2011.

The tenants paid a deposit in the sum of \$400.00; they have not given the landlord their forwarding address in writing and neither party has claimed against the deposit.

The tenants have claimed a loss of laundry service as the landlord rented them a basement unit that required the tenants go through a common area to do laundry. The landlord obtained a dog; the female tenant was severely allergic and afraid of the dog, which resulted in the tenants doing laundry elsewhere.

The landlord stated that she was aware that the female tenant was afraid of the dog, but she did not know the tenants did not want to do their laundry. The tenant confirmed that the landlord was not approached until June 18, 2011, when the landlord agreed to allow the tenants to move out.

The landlord stated that the tenants then changed their minds and decided not to move out of the unit; the tenant denied this and testified that the landlord agreed they could leave and that they did vacate between July 15 and 17, 2011.

The landlord had claimed loss of rent revenue from July to September, inclusive. The landlord re-rented the unit effective September 1, 2011, and confirmed that she had a claim for 6 weeks of rent, from July 18 to September 1, 2011.

The tenant stated that the landlord was not entitled to compensation as she had given them permission to move.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The parties agreed that in mid-June, 2011, the landlord had become aware of the female tenant's fear of the dog and that she agreed to allow the tenant's to vacate prior to the end of the fixed term tenancy.

I find, on the balance of probabilities, that the landlord did provide the tenants permission to leave the unit and that the tenants did so based on this understanding they had with the landlord. The landlord knew by mid-June, 2011, that the female tenant was fearful of the dog; it that this was not likely to change. The landlord had no intention of surrendering her pet.

Therefore, I find that there was agreement that the tenancy would end, and, pursuant to section 44(1)(f), I find that the tenancy ended on July 17, 2011. Therefore, I find that the landlord is not entitled to loss of rent revenue.

The tenants have not proven on the balance of probabilities that they made the landlord aware of their concerns in relation to access to the laundry; they only approached the landlord in June, at which time agreement was reached that the tenancy could end. Therefore, in the absence of any evidence that would support a claim for loss of value throughout the tenancy, I dismiss the tenant's claim.

The deposit continues to be held in trust by the landlord and must be disbursed as provided by the Act.

The parties can access information on tenancies and return of security deposits at: <http://www.rto.gov.bc.ca>.

Conclusion

Both applications are dismissed.

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: September 08, 2011.

Residential Tenancy Branch