



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the "Act"), and dealt with the Tenant's Application for Dispute Resolution. The Tenant's Application requested a monetary order for compensation for damage or loss, rent reduction, and recovery of the filing fee.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Tenant testified that she had previously applied for dispute resolution of the same issues contained in this Application, however neither party attend an oral hearing scheduled on January 21, 2010, and the Tenant's application was dismissed with leave to reapply.

The Tenant is no longer in the rental unit and the tenancy ended on November 30, 2010, as a result the rent reduction claim is dismissed as there is no tenancy between the parties at this time.

The Tenant and the Landlord participated in a Dispute Resolution Hearing on August 19, 2011 and received a decision and monetary order on that date from the Residential Tenancy Branch. The decision awarded the Landlord the total amount of \$3,742.00. The decision ordered that the Landlord retain the security deposit of \$2,000.00 and ordered Tenant to pay the Landlord a balance owing of \$1,742.00.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for damage or loss and recovery of the filing fee?

Background and Evidence

The Tenant requests a monetary order for \$1,692.00, consisting of thirteen days rent August 1-13, 2009 in the amount of \$1,402.00; \$240.00 in cleaning costs; and reimbursement of the \$50.00 filing fee for this proceeding.

The parties agreed that they had a tenancy agreement that began August 01, 2009 and ended November 30, 2010. They also agreed that the rental unit was a house and the monthly rent was \$3,950.00.

The Tenant testified that her house had burned down and she lost all of her belongings while she was away in Norway and she had to rebuild it. The Tenant stated that while it was being rebuilt she had to rent another house, and they rented the Landlord's house for this purpose and paid a deposit to the Landlord in July 2009. The Tenant testified that she was not able to move into the house on August 01, 2009 as it was still being painted. She stated that the painter did not keep the house secure, the painter was a stranger to her, and it was not safe for her dogs or children to be alone there, so she could not move in while the painting was occurring. The Tenant stated that she went to stay on Hornby Island for the first week of August and after that with her mother until the painting was completed. The Tenant stated that she asked her mother to pick up the keys from the Landlord during the first week of August. The Tenant stated that the painting was not completed until August 13, 2009 as the painter was painting both the interior of the house and doing work on the exterior. The Tenant stated that the first night she slept in the rental unit was August 14, 2009. The Tenant stated that her sister who lived two blocks away from the rental house could confirm the painting dates, as could her mother who picked up the keys on the Tenant's behalf. Neither witness attended the hearing to present their testimony.

The Tenant testified that she was not satisfied with the cleanliness of the house when she moved in and that she hired a private cleaner to clean the stove, fridge, bathroom, and the cupboards. She states that the cleaner charged her \$15.00 per hour for 16 hours of cleaning and that the bill dated August 12, 2009 from the cleaner was for a total of \$240.00. The Tenant did not provide a copy of this bill into evidence. The Tenant also stated that she had pictures of the condition of the rental unit prior to her cleaner doing the work; however, she did not provide copies of these photos into evidence. However, the Tenant did provide into evidence a copy of an email from the previous tenants that confirmed that they had vacated the premises on July 30, 2009 and that the Landlord had not commenced any work at the time they moved out. The Landlord confirmed that she had received a copy of the email evidence with the Tenant's Application and Hearing Notice. The email also states, however, that the prior tenants "had cleaners in" the rental unit on July 29, 2009. The Tenant still stated that she found that the rental unit was not clean enough.

The Landlord stated that in July 2009 when the Tenant came to negotiate the terms and conditions of the tenancy with her and pay the deposit, the Tenant had requested that the tenancy commence in mid August. The Landlord stated that she advised the Tenant that the tenancy agreement was for August 01, 2011. The Landlord stated that when she inspected the rental unit when the previous tenants had moved out, she was satisfied with the cleanliness of the rental unit, and found only that the carpet needed shampooing and touch up painting was required. The Landlord stated that she had the carpet shampooed and had a painter come in to do the painting. The Landlord testified

that the painter billed her for a total of three days of painting for the interior and exterior work. The Landlord disagreed that there was any disruption to the Tenant. The Landlord provided a copy of a receipt prior to the hearing, and stated that she had sent it by regular mail to the Tenant. The Tenant stated that she had not received a copy of this.

Both parties confirmed that a move in condition inspection report was not done.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

This is the Tenant's claim for damage or loss under the Regulation and therefore the Tenant has the burden of proof to establish their claim on the balance of probabilities.

Section 32(1) of the Act states:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 21 of the Residential Tenancy Regulation (the "Regulation") states:

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

- 67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I have carefully considered the information of both parties. I find that the Tenant has failed to establish her claim.

No move in condition inspection report was done by the parties. In the absence of such a document, I have had to weigh the evidence provided by the parties, most of which was oral testimony. I find that crucial evidence related to the Tenant's case has been withheld by the Tenant. The Act requires the parties to a dispute resolution proceeding to provide all evidence in advance of the hearing. The Tenant had no explanation for why she withheld evidence that was supportive of her position. The Tenant testified that she has photographic evidence of the condition of the rental unit in August 2009 and a cleaning bill in support of her claim, however, none of these documents have been provided for this hearing. The only document provided by the Tenant was a copy of an email from the previous tenants which stated that they had their own cleaner come in to clean the rental unit when they had moved out in July 2009. I find that the Tenant has failed to establish her claim for the cleaning costs.

The rental unit is a large house. The Tenant has also failed to provide evidence to support her position that the rental unit was uninhabitable between August 1-13, 2009, due to a painter jeopardizing the security and safety of her dogs and children. The Landlord has confirmed that a painter had performed touch up painting and some exterior work at the rental unit and billed her for three days in total. Neither party submitted copies of evidence or a bill relating to the painting work. I find that the Tenant has failed to establish her claim for damages or loss in relation to the August 1-13, 2009 period. As a result, the Tenant's claim is dismissed without leave to reapply.

Conclusion

The Tenant's claim is dismissed without leave to reapply.

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: November 09, 2011.

Residential Tenancy Branch