



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement.

The female tenant, the tenants' advocate, the landlord and landlord's agent and interpreter appeared and the hearing process was explained to the parties. The parties then gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, to make submissions to me and respond each to the other.

Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenants to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The tenant submitted evidence of a tenancy agreement signed by the female tenant and the landlord. According to the terms of the tenancy agreement, the tenancy was to start on February 1, 2011, for a fixed term of one year, ending on February 1, 2012, monthly rent was to be \$750.00, payable on the first day of the month. The tenant was required to pay a security deposit of \$375.00 by February 1, 2011.

The tenant's claim includes \$400.00 for extra rent, \$200.00 for lost security deposit, \$20.00 for bus fare, \$120.00 for storage, \$1,000.00 for pain and suffering. The tenant also asked that I consider loss of income for the listed male tenant.

The tenant's evidence:

The tenant saw the rental unit advertised in mid January 2011, contacted the landlord and arranged begin the tenancy on February 1, 2011 by way of entering into a tenancy agreement. The tenant arranged with her housing society to have a rent check issued for the first month's rent as well as for the security deposit.

The tenant was 8 months pregnant at the time.

On January 29, the tenant left her hospital room, where she was staying due to her late stage of pregnancy, as she was instructed by the landlord to go to the rental unit and pick up the keys.

The tenant attended the rental unit, but no one was there with the keys. After calling the landlord, she, the tenant, was told by the landlord that the next time she attended the rental unit, someone would be there with the keys.

After going back to the rental unit on February 2, 2011, again no one was there with the keys. After waiting 2 hours, the tenant had to return to the hospital in order to secure a room for the night.

The tenant has never been given keys to the rental unit, had to look for alternate accommodations, and could not find a new rental unit until March 1, 2011.

The tenant incurred extra costs of \$400.00 for the month of February 2011, due to the landlord not providing the rental unit as agreed upon, due to having to ask her former landlord if she could extend her occupancy in her prior rental accommodations. Also as a result, the tenant suffered a loss of a "damage" deposit, in the amount of \$200.00.

Due to not having the rental unit as agreed upon, the tenant incurred bus fare for \$20.00 and storage costs for the month of February for \$120.00.

The tenant submitted that due to the stress of having lost her rental unit and not having a place to live for the month of February, 2011, she gave birth to baby early and is therefore entitled to compensation for pain and suffering.

The tenant's advocate evidence:

The tenant's advocate accepted the tenant for subsidized housing after reviewing the tenancy agreement between the parties and issued a check for the first month's rent.

Thereafter, due to the problems the tenant experienced in January in not being able to obtain the keys, the tenant's advocate attended the rental unit with the tenant and witnessed the argument between the landlord and her husband and others at the rental unit. The advocate was a witness to the difficulties with the tenant in attempting to move into the rental unit.

The tenant's advocate stated that due to the stress and anxiety of the failure of the landlord in providing the rental unit, the tenant, a recovering drug addict, succumbed to using drugs again on February 2, 2011.

Landlord's evidence:

Through an interpreter, the landlord submitted that the tenant has been refunded her February rent and the security deposit; therefore no claim exists.

The rental unit was not made available to the tenant due to issues with the heating and non-working toilet, as the rental unit would not be suitable for a newborn baby.

Analysis

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

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.

I find the landlord and the female tenant entered into a valid, enforceable tenancy agreement and that the landlord was responsible for providing the rental unit on February 1, 2011, according to the terms of the tenancy agreement, but failed to do so.

Residential Tenancy Branch Policy Guideline states that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances, such as the landlord is expected to provide the premises as agreed upon and in a state conforming with health and safety standards as required by law. If a tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of a monetary award for the portion of the premises or property affected.

I agree with Policy Guideline and find that the landlord deprived the tenant of the rental unit as contracted for, which the tenant was not sure of until February 2, 2011, which required the tenant to find another place to stay on an emergency basis while heavily pregnant and into the first month of the tenancy which never began.

I find it reasonable that due to the landlord's breach of the Act and tenancy agreement, the tenant is entitled to a **monetary claim** in the amount of **\$750.00**, representing the rent for the month of February 2011.

As to the tenant's claim for \$1,000.00 for pain and suffering, a claim in tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find this claim to rise to that requirement.

I therefore **dismiss** the tenant's claim for **\$1,000.00** for pain and suffering.

I also **dismiss** the tenant's monetary claim for loss of a "damage" deposit, storage, bus fare and loss of rent, as the tenant failed to submit evidence of a monetary loss as required under the Act.

Other evidence supports a claim by the listed male tenant, but I do not find any agreement between that party and the landlord. I therefore have not considered any alleged loss by the listed male tenant.

Conclusion

I find the tenant has established a **monetary claim** of **\$750.00**, comprised of the amount of monthly rent which she was to pay for the rental unit as way of damages for being deprived of the loss of use of the entire rental unit for the month of February 2011.

I grant the tenants a monetary order in the amount of \$750.00, which I have included with the tenants' Decision.

This order is a final, legally binding order, and may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with the Order.

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 07, 2011.

Residential Tenancy Branch