



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MT, MNDC, MNSD, OPT, LAT, 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 for an Order of Possession for Unpaid Rent and to recover the filing fee costs.

The tenant applied requesting compensation for damage or loss under the Act, return of the deposit, an Order of possession for the unit, authorization to change the locks and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant withdrew the portion of her claim, requesting moving costs.

As the parties reached agreement in relation to an end of the tenancy and the tenant is residing in the unit; an order of possession for the tenant was not required.

During the hearing each time the landlord was asked a question or to respond to a submission there was a delayed response. The landlord did not spontaneously answer the questions. The tenant alleged that the landlord had someone with her and suggested the landlord was consulting with that person before providing responses.

The landlord denied that she was accompanied by anyone.

Mutual Agreement to End the Tenancy

During the hearing the tenant and landlord agreed that the landlord will be given vacant possession of the rental unit on June 22, 2012, at 1 p.m. and that the landlord was entitled to an Order of possession for that date and time.

Based on this mutual agreement, pursuant to section 63(2) of the Act; I Order that the tenancy end on June 22, 2012, at 1 p.m.

Issue(s) to be Decided

Is the tenant entitled to a monetary Order as compensation for damage or loss?

Is the tenant entitled to return of the deposit paid?

Should the tenant be authorized to change the locks to the unit?

Is either party entitled to the filing fee costs?

Background and Evidence

The tenancy commenced on April 13, 2012, rent is \$500.00 per month, due on the date the tenant receive her monthly employment insurance cheques. The first rent payment was made on May 19, 2012. There is no written tenancy agreement.

Payment of a deposit was in dispute; the tenant submitted a friend had sent the landlord a money order in the sum of \$300.00, as a deposit. The landlord stated she did not receive a deposit.

The tenant was asked to obtain a copy of the security deposit money order and to submit that copy to the Residential Tenancy Branch no later than 4 p.m. the day following the hearing. A copy of the money order was not supplied.

The tenant claimed compensation as follows:

New rental	750.00
Temporary housing to date	380.00
TOTAL	1880.00

The tenant stated that the landlord's father assaulted her and that she is being forced from the rental unit. The tenant has changed the locks to the door and has not received an order allowing her to do so. She has not given the landlord a copy of the keys to the rental unit.

The tenant stated she is entitled to costs she will incur as a result of the actions of the landlord.

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.

As the tenant has applied for compensation in the absence of any verification of the loss she claims, I find that the claim is dismissed.

During the hearing the tenant was ordered, pursuant to section 62(3) of the Act, to provide the landlord with a copy of the key to the rental unit no later than June 14, 2012. The tenant has not obtained an Order that would have allowed her to change the locks and there was no evidence before me to support the tenant's allegation she had been assaulted; requiring the locks to be changed. I have appended section 29 of the Act, which sets out landlord access to a rental unit.

In relation to the deposit, I find that the tenant's claim requesting return of the deposit was premature and is dismissed with leave to reapply. The tenancy has not yet ended, so the tenant may not yet request return of the deposit. Therefore, the deposit, if one has been paid, must be disbursed as required by the Act or may be decided at any future hearing. The absence of evidence of payment of the deposit, as requested, may be considered at any future hearing.

As the parties reached a mutual agreement in relation to the end of the tenancy, I decline filing fee costs to either party.

The tenant's claim is dismissed.

Conclusion

By mutual Agreement of the parties the landlord has been granted an Order of Possession that is effective at **1 p.m. on June 22, 2012**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant's claim is dismissed; the moving costs claimed were withdrawn.

The claim for return of the deposit is dismissed with 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: June 15, 2012.

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

- (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
 - (d) the landlord has an order of the director authorizing the entry;*
 - (e) the tenant has abandoned the rental unit;*
 - (f) an emergency exists and the entry is necessary to protect life or property.*
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

