



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, LRE, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Cause, for a monetary compensation for damage or loss under the Act, regulations or tenancy agreement, for the landlord to comply with the Act, to set conditions on the landlord's right of entry into the rental unit and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on May 19, 2012. I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Tenant said they had moved out of the rental unit on May 21, 2012 and therefore they are withdrawing the request to cancel the Notice to End Tenancy for Cause, the request for the landlord to comply with the Act and to set conditions on the landlord's right of entry to the rental unit because the tenancy has ended and these issues are no longer applicable. As well the Tenant requested that the return of their security deposit be added to the application.

Issues(s) to be Decided

1. Is there loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started on February 15, 2012 as a fixed term tenancy with an expiry date of February 14, 2013. Rent was \$900.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$450.00 on February 6, 2012. The Tenant said they moved out of the rental unit on May 21, 2012 as a result of receiving a 1 Month to End Tenancy for Cause, dated April 22, 2012 and a 10 Day Notice to End Tenancy for Unpaid rent dated May 6, 2012. A move in condition inspection was completed on February 13, 2012 and a move out condition inspection was completed on May 21, 2012.

The Tenant said they had a verbal agreement with the Landlord to use the security deposit of \$450.00 to pay the unpaid rent for May, 2012. The Landlord said he only agreed to use the security deposit for the balance of the May, 2012 rent (\$450.00) on the basis that the Tenants would meet some conditions with respect to moving out. The Landlord said the Tenants did not meet the conditions; therefore he did not use the security deposit to pay the unpaid rent for May, 2012. The Landlord said he issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 6, 2012 and he has made an application to the Residential Tenancy Branch by way of the Direct Request application process on May 17, 2012 for the unpaid rent. It should be noted that the Condition Inspection Report makes no reference to the use of the security deposit.

The Tenant said they have made this application because the Landlord advanced the date of the tenancy ending from May 30, 2012 on the 1 Month Notice to End Tenancy, to May 16, 2012, when the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent, dated May 6, 2012. The Tenant continued to say they felt harassed by the Landlord and as a result they chose to move out of the rental unit on May 21, 2012. Because the Landlord moved the end of the tenancy forward to May 16, 2012, the Tenant said she incurred moving costs that she would not have incurred if she would have moved out on May 30, 2012 as originally agreed to in the 1 Month Notice to End Tenancy for Cause. As a result the Tenant said they are applying for monetary compensation for the cost of renting a truck of \$110.05, gas costs of \$120.00, the cost of moving a piano of \$285.00 and the first month and a half of rent in their new unit in the amount of \$1,419.35. The Tenant said their total claim is for \$1,934.40.

Further the Tenant said they are also requesting the return of their security deposit of \$450.00.

The Landlord said he has made an application to the Residential Tenancy Branch for the unpaid rent by way of a Direct Request application. The Landlord said he is not looking for an Order of Possession as the Tenants have moved out and he has possession of the rental unit. The Landlord said he did not agree to retain the security deposit for unpaid rent and he has not done so.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Tenants' claim is based on the premise that the Landlord caused the Tenants a monetary loss due to the eviction and the resulting moving costs and the cost of rent in the new rental unit. I find the Landlord is not responsible for the Tenants moving, because the Tenants were evicted because of their own actions. The Tenant said they

chose to move out on May 21, 2012 and they did not dispute the 10 Day Notice to End the Tenancy for Unpaid Rent. Consequently the Tenants have not established grounds to prove the Landlord is responsible for their moving costs and rent. In fact the Tenants are responsible for the tenancy ending and therefore the Tenants are responsible for any moving costs that they incurred. I dismiss the Tenants claims for monetary compensation as the Landlord is not responsible for any moving costs that the Tenants incurred nor is the Landlord responsible for any rent at the Tenants new rental unit.

With respect to the Tenants' request to have the Landlord return their security deposit in the amount of \$450.00, I find that since the Landlord has made no claim against the security deposit, I order the Landlord to return the Tenants security deposit of \$450.00 forth with. The Landlord has made an application for unpaid rent and if he is successful he will be compensated for any unpaid rent through that application.

As the Tenant has been only partially successful in this matter, I order the Tenant to bear the \$50.00 application fee for this proceeding which they have already paid.

Conclusion

The Tenants' monetary claims for loss or damage are dismissed without leave to reapply.

I order the Landlord to return the Tenants' security deposit of \$450.00 forth with. A Monetary Order in the amount of \$450.00 has been issued to the Tenants. A copy of the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch