

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for an order of possession and a monetary order for unpaid rent, for money owed or compensation for damage or loss, to keep all or part of the security deposit and the recovery of the filing fee. The Tenant has made an application for a monetary order for money owed or compensation for damage or loss, the return of the security deposit and the recovery of the filing fee.

As both parties have attended in person and have acknowledged receiving the submitted evidence of the other party, I am satisfied that both parties have been properly served with the notice of hearing and evidence packages as deemed under the Act.

At the beginning of the hearing it was clarified with both parties that the Tenant has vacated the rental unit and that the Landlord has withdrawn the request for an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

There is a signed tenancy agreement dated August 18, 2011 that states that a fixed term tenancy began on August 15, 2011 for one year until August 31, 2012. The monthly rent was \$1,400.00 payable on the 1st of each month and a security deposit of \$700.00 was paid on August 15, 2011.

The Landlord has made a monetary claim for \$2,990.00 which consists of \$1,400.00 in unpaid rent for March 2012, a \$1,400.00 claim for loss of rental income for April 2012

for lack of notice, \$67.20 for carpet cleaning, \$72.80 for re-keying the mail box and the recovery of the \$50.00 filing fee.

Both parties agreed that the Tenancy ended on March 31, 2012. The Landlord states that the Tenant failed to pay rent of \$1,400.00 for March and served the Tenant a 10 day notice to end tenancy for unpaid rent dated March 19, 2012 that was posted to the rental unit door on the same date. The notice states that rent of \$1,400.00 was due on March 1, 2012 and was unpaid as of the date of the notice. The stated effective date of the notice was March 29, 2012. The Tenant argues that First and Last months rent was free as per the signed tenancy agreement. The Landlord disputes this. Both parties agreed that section 3 of the signed tenancy agreement has a note that states, "September 2011 rent is free. August 2012 rent is free." This note was initialled by both the Landlord and the Tenant. The Landlord argues that this is a fixed term tenancy ending August 31, 2012 and that the tenancy may continue on a month to month basis or another fixed term for which the free rent was for August 2012 and not for the Tenant's last month as claimed. The Tenant asserts that this was a mutual end of tenancy as per an offer made by the Landlord in a meeting dated December 15, 2011 in which the offer was made. The Landlord disputes this and has submitted documentary evidence of correspondence from the Tenant and the Landlord over the "offer" made. The Tenant's witness, R. B. gave evidence that he was present and stated in his direct testimony that the Landlord stated that he can "make no promises" in reference to an offer, no specific agreement was made for a mutual end to the tenancy and any compensation. The witness also stated when questioned by the Landlord's Counsel that the Landlord's Agent in the meeting had limited authority and would have to check for permission on any offer. The Landlord has submitted documentary evidence that stated that communication was ongoing, but that no offer/agreement was made between the parties. I find based upon the evidence provided that there was no mutual agreement to end the tenancy and that no notice to vacate was given to the Landlord. The Tenant has failed to satisfy me that any offer was made by the Landlord and that an understanding of an agreement was agreed to by both parties. The Landlord has established a monetary claim for unpaid rent of \$1,400.00 and the \$1,400.00 for lack of proper notice in ending a tenancy as the Tenant vacated the rental unit without proper notice.

During the hearing both parties agreed that the Tenant had conceded to the \$72.80 charge for re-keying of the mailbox. As such, this portion of the Landlord's claim is granted as it is unchallenged.

The Landlord has also made claim for \$67.20 for the cost of professional carpet cleaning. The Landlord has provided a copy of the addendum to the signed tenancy agreement on page 5 section 17 (c) which states, "professionally clean blinds and carpets in the rental unit when moving." I find that as the Tenant has failed to provide sufficient evidence in response to this portion of the Landlord's claim and the noted addendum in the signed tenancy agreement that the Landlord has established their claim. The Landlord has established a monetary claim for \$67.20 in carpet cleaning costs.

The Tenant has made a monetary claim for \$24,999.00 for the loss of quiet enjoyment, the loss of professional income, moving, temporary accommodations and storage expenses. The Landlord disputes this claim as the Tenant has not provided any details of the monetary claim in the application for the Landlord or for the Residential Tenancy Branch. The Tenant confirms this and states that it is up to that the Dispute Resolution Officer to determine the appropriate monetary award.

The Tenant states that she occupied the rental, which is approximately a 500 sq. ft. rectangular shaped unit, with a common wall with another unit for approximately 6 months. The Tenant states that her issue is from the common wall and that there is a "noise transference" in which she can hear the daily conversations, the opening and closing of cupboard doors, telephone ringing and the answering machine voice messages from the other unit. The Tenant stated that it "seemed like they are in the same room with me." The Tenant states that she informed the Landlord of this issue in late October 2011 by email. The City had a Sound Transmission Class (ASTC) testing performed by BKL Consultants Ltd. on April 16, 2012, for which a report is submitted. Both parties have submitted a copy of the testing report and the Landlord has submitted a copy of the consultant's qualifications. The Tenant has submitted a letter from the witness, R.B. who questions the report. The Tenant states that R.B. is a practicing Architect (structural architect expert) "with over 30 years in dealing with technical matters and bureaucratic treatment of the public by the civil service" and has provided in his letter a review of the test. The Landlord's Counsel questions the "expert" opinion of the witness by referring to the letter submitted in the first paragraph by the witness as biased. "This letter is provided as witness to conditions or review of reports and letters as Advocate in support of D.A. regarding acoustic issues in city rental unit." Both parties agreed that the Landlord offered to "open" the wall to explore what if any deficiencies were present. The Tenant refused this offer citing health concerns (allergies) and subsequently vacated the rental unit in March 2012. The Landlord states that an alternative offer was made to "open" the wall from the other rental unit and that

this offer was not accepted. The report by BKL states that the wall was built in compliance with the BC Building Code (2006).

The Landlord's Counsel argues that the Tenant failed to satisfy Residential Tenancy Branch Policy Guideline #8 by providing written notice to end the tenancy for breach of a material term. Counsel also argues that the Tenant has failed to provide any particulars of the claim or any evidence of wage losses and expenses.

I find that the Tenant has failed in her application. The Tenant has failed to provide sufficient evidence that any loss took place. Based upon the evidence, I find that the Landlord once notified reasonably addressed the issue brought forward by the Tenant. The Landlord made efforts to explore the noise issue by offering to open the wall. The Tenant declined this offer. The Tenant chose to end the Tenancy by vacating the rental prior to a resolution being reached. The Tenant has not provided any details of the monetary amount being sought for the claim, ie. Invoices/receipts for any expenses incurred, or any details of professional income or to what degree in compensation is being sought for the loss of quiet enjoyment and to what degree. The Tenant's monetary claim is dismissed.

The Landlord has established a monetary claim for \$2,940.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$700.00 security deposit in partial satisfaction of the claim and I grant the Landlord a monetary order under section 67 for the balance due of \$2,290.00.

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

Conclusion

The Landlord is granted a monetary order for \$2,290.00.

The Landlord may retain the security deposit.

The Tenant's application 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: August 31, 2012.

Residential Tenancy Branch