



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF, O

Introduction

The Applicant applied for compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the cost of the filing fee from the Respondent.

The parties gave affirmed testimony at the Hearing.

It was determined that the Applicant served the Respondent with the Notice of Hearing documents by registered mail. It was also determined that the Respondent served the Applicant with his documentary evidence in accordance with the service requirements set out in the Act and the Rules of Procedure.

Preliminary Matters

At the outset of the Hearing, it became clear that there was an issue with respect to jurisdiction. The Dispute Resolution process decides issues between landlords and tenants. The Respondent stated that the Applicant was only an occupant of the rental unit, and had no rights or responsibilities as a tenant. The Applicant stated that she was a tenant and therefore the Act applies.

The Respondent testified that the tenancy agreement was between another person (BW) and the Respondent only. He stated that the tenancy agreement was amended after the Applicant moved into the rental unit, but that it merely added her as occupant. He testified that he rented to BW only and collected rent and the security deposit from BW only. The Respondent submitted that there was no tenant/landlord relationship between him and the Applicant.

The Applicant stated that she wanted to sign a new tenancy agreement when she moved into the rental unit in June, 2010, but the Respondent assured her that an amended tenancy agreement would be sufficient. A copy of the amended tenancy agreement was provided in evidence.

The Applicant stated that, although BW generally paid the rent to the Landlord, she paid rent directly to the Landlord in August or September, 2010. She stated that she asked

for a receipt but the Landlord didn't give her one. The Respondent emphatically denied ever receiving rent directly from the Applicant.

The Applicant testified that she was getting a subsidy from BC Housing and that she had to provide them a receipt to prove what she was paying in rent. She stated that she advised the Respondent that she needed a receipt and that he provided one in October, 2010. A copy of the receipt was provided in evidence.

The Respondent acknowledged providing the receipt on October 1, 2012. He stated that he thought the receipt was to "scam the government for rent money".

The Applicant stated that she had the Respondent's permission, as a landlord, to have a small daycare in the rental unit. The Respondent stated that the daycare was between BW and the Applicant.

The Applicant stated that rent cheques were drawn from a joint account which was held by her and BW. The Respondent stated that the cheques were always signed by BW. He submitted that it was irrelevant whether it was a joint account or not.

Analysis on jurisdiction

The first page of the amended tenancy agreement identifies the Applicant as an "occupant", however, the Applicant signed the last page of the tenancy agreement as a "tenant". The agreement was amended in June, 2010, and the Respondent did not refute it or cause another agreement to be signed, which would have cleared up the ambiguity.

The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd.* 1986, 47 Sask R. 70 and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift*, (1982) 36 A.R. 193, that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. "Contra proferentem" is a legal term that means that when a term in an agreement is unclear or ambiguous, it must be interpreted against the interests of the person who drafted the agreement or caused it to be signed.

I find the contra proferentem rule applies in these circumstances. A tenancy agreement is provided by a landlord at the beginning of a tenancy, and I therefore conclude that the ambiguity must be interpreted against the Landlord. I find that the Applicant was a "tenant" and that the Respondent was her "landlord".

Issues to be Decide:

- Is the Tenant entitled to compensation for damage or loss pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Tenant moved into the rental unit on or about June 1, 2010.

In April, 2011, the Tenant was arrested and released on an Undertaking not to have contact with BW. Because of this “no contact” provision, the Tenant was not able to return to the rental unit except once, in the company of police, to collect her personal belongings. BW moved out of the rental unit on July 31, 2011.

The Tenant submitted that the Landlord evicted her without a notice to end tenancy. She stated that when BW moved out, she sought to move back into the rental unit. She seeks compensation from the Landlord in the amount of \$2,200.00 because she was without a residence from April 2011 until June, 2011, and \$2,000.00 for “unnecessary suffering and inconvenience”.

The Landlord submitted that the Tenant was not allowed to live at the rental unit because of the “no contact” order and that her possessions were always readily available for a third party to pick up.

Analysis

This is the Tenant’s claim for damage or loss under the Act, regulation or tenancy agreement and therefore the Tenant has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred **due to the actions or neglect of the Landlord** in violation of the Act, regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant has failed to provide sufficient evidence to prove her claim. I am not satisfied that the Tenant’s losses resulted from actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement. I find that the Landlord did not have control over whether or not the Tenant could have contact with BW (and therefore move back into the rental unit in April, 2011). I find that in effect, the Tenant abandoned the rental unit at the end of April, 2011, and that her tenancy ended with the Landlord at that point.

Therefore, the Tenant's application is dismissed without leave to reapply.

Conclusion

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 20, 2012.

Residential Tenancy Branch