



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This was the hearing of the tenants' application for a monetary order. The hearing was conducted by conference call. The tenants and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a condominium apartment in Vancouver. The tenancy began on June 1, 2012. Monthly rent is \$2,650.00. The tenant signed the tenancy agreement on May 23, 2012 and paid June rent plus a security deposit. The tenant testified that the landlord told her that she was getting a new floor put in the downstairs bedroom and the rental unit would be professionally cleaned before they moved in. According to the tenant the landlord did not contact her to give her the keys on June 1st. The tenant contacted the landlord and received the keys to the rental unit on June 6th. She said that the floor was not done; the old floor covering was gone, no new flooring had been installed and the floor was bare concrete. The tenants said that they were told it would take two or three more days to complete. The tenants requested a 6 day rent credit from the landlord. On June 7th the landlord refused the request; she said in an e-mail that:

About your question re: rent credit for 6 days... The townhouse was painted by June 1st and (name of tenant) theoretically could have gotten keys and moved in then, only you mentioned that there was no rush. Downstairs floor is being done now, but it is ok to be here while that is happening too...just downstairs room not available for 2 days... could figure out reimbursement for that, but perhaps the new floors make up for that inconvenience?

The Tenant said that the work and cleanup to be performed by the landlord was not completed until June 17th. The tenants testified that as of June 8th the floor was not fully completed, the door leading to the garage was off its hinges and the promised cleaning had not been done, but the floor in fact had been installed. The tenants said in a June 16th e-mail to the landlord that it appeared the work had been completed with some minor exceptions and except for some cleaning.

The tenants decided not to move into the rental unit. They ended up subletting the unit, but have continued to be responsible for the premises and the payment of rent since the commencement of the tenancy. In this application they have claimed payment of the sum of \$1,501.61, which they say is the amount of a 17 day rent credit at \$88.33 per day for the period they claim to have been deprived of the use of the rental property.

The landlord disputed the tenants' claim. She said that she told the tenant in May that she was making some improvements to the rental unit and told her that the floors would be done around the first week of June. She testified that the tenant told her that this was not a problem because they were not in a hurry to move in. The landlord said that the flooring only involved the downstairs bedroom of the rental unit which comprised less than 300 square feet of the total area of some 1,500 square feet. The landlord said that the tenants told her that they were not in a hurry to move in and this would not be a problem. The landlord said that the flooring took longer than expected because the concrete floor needed to be leveled, the flooring needed to be ordered from Ontario and the flooring required some time to "settle". The landlord maintained, however, that the rental unit was fully painted, cleaned and ready for occupancy on June 1st. The landlord submitted that the downstairs bedroom was unavailable for three days only, from June 6th to June 8th. The landlord offered to credit the tenants for three days rent. The landlord submitted that the tenants should not be compensated because they knew when they signed the lease that work was contemplated and if they expected a refund for part of June rent they should have said so when they signed the lease. She submitted that the tenants did not need to move in on the first of the month and, in her view were improperly using the delay in an attempt to recover more than half of the rent for June.

In an e-mail to the tenants sent on June 17th, the landlord said:

I understand that you feel you should get a discount for time that the suite is being fixed up. However, painting was done by June 1st and cleaning could have been done June 2nd if you/(name of tenant) had wanted to move in right away. I had a bunch of extra improvements done for you since there was time, like put in new closet doors upstairs, new bathroom door and closet doors downstairs, removed old mirror and repainted, baseboard in closet etc... I would not have had these extras done if you needed to move in right away.

Because you expressed that there was no urgency in moving in, I decided to delay the final cleaning and carpet shampooing until all the repairs were done. (Cleaners and carpet cleaning is today, Sunday.) As I said this would have been done on June 2nd if you had wanted to move in right away.

Analysis and conclusion

The residential tenancy agreement provided that the tenancy was to commence on June 1, 2012. There was no express agreement by the tenants to pay the full amount of rent for June and accept occupancy at a later date. I find that in the absence of an express agreement to the contrary, the residential premises are expected to be available and fully ready for occupancy on the commencement day of the tenancy. The tenants denied that their comment on May 23rd that they had no problem with the landlord's proposed re-flooring meant that they were content to delay their move or to accept the rental unit before the landlord had finished improvements and cleaning. On the evidence the tenants did not request the extra work and improvements that the landlord said she installed and the tenants were not consulted to ask whether they were prepared to wait for additional work to be done before moving in and to pay the full rent for June.

I find that the tenants are entitled to some compensation for loss of use of the rental unit for part of June. The tenants requested compensation equivalent to 17 days at a daily rental amount of \$88.33 per day; I find the amount claimed to be excessive; on the evidence the floors were completed on or about June 8th, but there was still cleaning to be done. I accept the tenants' position that they should not be expected to accept the premises and move in while the flooring work was underway, but I consider that the tenants could have moved on or about June 8th even though there was still some cleaning to be done.

I find that an appropriate award of damages is the sum of \$640.00, being one quarter of one month's rent and I award the tenants the said amount. The tenants are entitled to recover the \$50.00 filing fee for their application for a total award of \$690.00 and I grant them a monetary order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

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 16, 2012.

Residential Tenancy Branch