



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Preliminary Issues

Upon review of the application for dispute resolution and the tenancy agreement provided in evidence both parties confirmed the person named on the application was the resident manager and not the Landlord as named in the tenancy agreement. Both parties stated they wished to have the style of cause changed to remove the resident manager's name and add the corporate Landlord's name. Based on the submissions of both parties the style of cause was amended, as requested, in accordance with section 64 of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be issued a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: the tenancy agreement, the application for tenancy, and the move in condition inspection report form. The Landlord submitted the same documents which were placed with their application on a different file.

The following facts were not in dispute:

- The Tenant and her recently deceased spouse completed an application for tenancy and once approved entered into a written month to month tenancy for unit # 7 which began on February 1, 2011.
- Rent was payable on the first of each month in the amount of \$880.00 and on February 1, 2011 the Tenants paid \$440.00 as the security deposit.
- A move in condition inspection report form was completed and signed by both parties on February 1, 2011.
- The Tenant's spouse passed away near the end of April 2012 and a day or two later the Tenant and her daughter approached the resident manager to discuss moving out of unit # 7 and into a larger three bedroom unit.
- The Tenant and her daughter were shown a few units and verbally agreed to move out of unit # 7 and into #35 effective June 1, 2012.
- The parties verbally agreed that the rent would be increased to \$975.00 per month.
- No paperwork was completed to document the move from # 7 to # 35.
- The Tenant was provided the keys for unit #35 on approximately May 25, 2012 and vacated unit #7 by June 1, 2012.

The Tenant confirmed she has not issued a written request for the return of her deposit paid on February 1, 2011; nor has she provided the Landlord with her forwarding address in writing after moving out of unit # 7. She argued that she never agreed to have her security deposit transferred from # 7 to unit #35 and therefore she should be entitled to return of double that deposit.

The Landlord stated that she did not want to bombard the Tenant with a lot of paperwork at the time of her move considering everything was happening only a few days after her husband passed away. She recalls the conversation where the Tenant asked to move into unit # 35, two or three days after her spouse passed away. She said at that time she told the Tenant not to worry about anything they would just transfer everything over to unit # 35 and the only change would be a difference in rent. She said the Tenant replied by saying "no problem". They did not conduct a move out inspection

on # 7 because the Tenant left it clean and because they wanted to assist the Tenant in getting settled into # 35 as easily as possible.

The Witness, the Tenant's daughter, advised she was with her mother when they met with the Landlord and discussed moving into unit # 35. She confirmed that there was no mention of paper work that needed to be completed but there was a discussion about rent being higher for the new unit. She did not question the Landlord about what was required in terms of paper work, she simply moved in and began paying rent.

The Tenant denies hearing the Landlord tell her that everything would be transferred from unit # 7 to unit # 35. She confirmed that they did not pay another security deposit for unit # 35 and did not complete additional paperwork.

Analysis

I have carefully considered the above and the documentary evidence and on a balance of probabilities I find as follows:

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I favour the evidence the Landlord who stated she told the Tenant not to worry about anything and that they would transfer everything over from # 7 to # 35. I favored that evidence over the evidence of the Tenant who simply denied hearing the Landlord say she was transferring everything over during a time that the Tenant would have been under a lot of stress.

I favored the Landlord's evidence because their explanation matched their actions. For example, from the onset of the tenancy for unit # 7 the Tenant was required to provide detailed information on their written application for tenancy, had to pay a security

deposit, sign a written tenancy agreement, and sign a written move in condition inspection report form. I find the original paperwork to indicate the Landlord managed their tenancy files and kept records for their tenancies. Then when the Tenant's spouse passed away and she wanted to enter into a new tenancy for unit # 35, at a higher amount of rent, with the addition of new tenants, she was not required to sign any paperwork and she was not requested to pay a security deposit or go through a move out inspection. Therefore, I find the Landlord's explanation that they agreed to transfer everything over to unit # 35 to be plausible given the circumstances presented to me during the hearing.

Based on the foregoing, I find the security deposit of \$440.00 which was paid for unit # 7 on February 1, 2011, was transferred to the tenancy agreement for unit # 35 on June 1, 2012, by mutual agreement. Therefore, the matters relating to the security deposit for unit # 7 has been finalized, and I dismiss the Tenant's application.

The Tenant has not been successful with her application; therefore she must bear the burden of the cost to file her application.

Conclusion

I HEREBY DISMISS the Tenant's application, 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: January 25, 2013

Residential Tenancy Branch

