



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This was the reconvened hearing dealing with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, a monetary order for a return of her security deposit, and for recovery of the filing fee.

The parties appeared, along with the landlord's legal counsel, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on March 1, 2011, ended on November 30, 2012, monthly rent was \$900.00, and the tenant paid a security deposit of \$450.00.

The security deposit was returned to the tenant at the end of the tenancy.

The tenant's monetary claim is \$3368.41, comprised of a claim for rent of \$900.00 for the months of October and November 2012, each, moving costs of \$941.84, loss of wages for \$500.00, mail forwarding service of \$50.40 and a PO Box rental for \$76.16.

The tenant's relevant evidence included text messages between the tenant and the landlord, for various times during the tenancy, an October 23, 2012, letter to the landlord that the tenant was moving out by November 30, 2012, a 1 Month Notice to End Tenancy for Cause issued by the landlord to the tenant, dated November 1, 2012, a letter from Canada Post, dated October 31, 2012, stating that due to the dispute between the tenants, the mail key would be given only to the landlord, a moving quote, a condition inspection report, and a partial, faint copy of a tenancy agreement.

Claim for reimbursement of rent for October and November 2012-

In support of her claim the tenant said she began having problems with the tenants in the upper unit almost immediately after they moved in during April 2012.

In July 2012, the tenant claimed that she began hearing instances of child abuse by the female tenant in the upper unit against her son. In other instances, the upper tenants became verbally abusive and threatened assault against the tenant, claimed the tenant.

The tenant said she tried to work out any problems with the upper tenants herself, but was unsuccessful in so doing.

The tenant said that she was compelled to call the police at least three different occasions, due to the misconduct of the upper tenants.

The tenant said that she reported these issues to the landlord, but that he failed to respond or take action.

The tenant said she was informed by the landlord that the upper tenants would be moving in September, but that they failed to do so. As the upper tenants failed to move, the tenant wanted to move early, but she was prevented from so doing until the end of November 2012.

The tenant claimed that the upper tenants engaged in a pattern of blocking the driveway, preventing access to drive in or out. The tenant sent text messages to the landlord, showing the vehicle in front of her driveway.

The tenant claimed the disturbances from the upper tenants deprived her of her rights to quiet enjoyment and the landlord stood by without taking action.

In response, the landlord said that the issues between the upper and lower tenants was a case of two sets of tenants not getting along, for which the landlord made many attempts to resolve. The landlord submitted that he made significant efforts to resolve

the parties' differences and that every time he was notified of a problem by either sets of tenants against the other, he responded.

The landlord argued that he required proof from the tenant that child abuse was occurring in the upper unit before he could take action against that tenant, but no proof was ever forthcoming from the tenant.

The landlord contended that if there had been any proof of child abuse, the Ministry would have taken action against the upper tenants.

The landlord denied informing the tenant that the upper tenants were moving out in September, only that they were thinking of moving out.

The landlord claimed that each time he was notified that the driveway was blocked, he called the upper tenants.

The landlord claimed that he received complaints from the upper tenants about the tenant in this case.

The landlord claimed that he was forced to seek the end of the tenancy due to the issues with the tenant, by issuing a 1 Month Notice to End Tenancy for Cause.

Moving costs-

The tenant claimed she was entitled to recover the moving costs from the landlord as she was forced to move early from the rental unit, due to the upper tenants' actions and the landlord's lack of action.

In support, the tenant submitted a quote from a moving company.

In response, the landlord denied that the tenant was required to move early due to his actions; rather it was the actions of the tenant forcing a move.

Loss of wages-

The tenant claimed that as she was forced to move early, she had to take off time from work to secure another home, resulting in a loss of wages.

The landlord denied that the tenant was forced to move early.

PO Box rental-

The tenant submitted that the upper tenant changed the locks on the common mail box and that she was deprived of her mail for at least a week. The tenant said that Canada

Post informed her that her basement suite was not recognized as being a legal address and that they would only give a new key to the owner.

In response, the landlord claimed to respond to this issue by putting the mail box in the middle of the house with access for both sets of tenants.

Mail forwarding service-

The tenant submitted that she incurred costs for the mail forwarding service as she was compelled to move early from the rental unit.

Undue stress-

The tenant submitted that the situation with the upper tenants caused undue stress; however the tenant failed to claim a specific amount as compensation.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Reimbursement of rent for October and November 2012-

I find no legal basis for awarding the tenant reimbursement of the rent for these months. The tenant was obligated to pay rent as per the terms in the tenancy agreement and I have no proof that the tenant was prevented from the full use of the rental unit.

I did not see any written notices to the landlord, other than an October 23, 2012, letter to the landlord that the tenant was moving out by November 30, 2012.

I therefore find the tenant submitted insufficient evidence that she is entitled to be reimbursed rent for these months and I therefore dismiss her claim for \$1800.00.

Moving costs-

I find no legal basis for awarding the tenant costs of moving as the tenant made choices in how she chose to move. Additionally the tenant failed to submit proof of incurring such expense as the evidence was a quote, not an invoice.

I therefore dismiss her claim for \$941.85.

Loss of wages-

The tenant submitted no evidence of lost income and due to this lack of proof and no legal basis, I dismiss her claim for \$500.00.

PO Box rental-

I find the tenant sufficiently established that she had serious issues regarding the delivery of her mail, which required her to rent a mail box. I also find the landlord failed to take sufficient action to ensure the tenant had rights to her mail.

I therefore grant the tenant's monetary claim of \$76.16.

Mail forwarding service-

I do not find a legal basis to award the tenant compensation for this service, as the tenant provided her notice that she was ending the tenancy. It was the tenant's choice to have her mail forwarded by Canada Post and I therefore dismiss her claim for \$50.40.

Undue stress-

The tenant provided no proof or substantiation that the landlord was the cause of undue stress or that the landlord violated the Act or tenancy agreement. I therefore dismiss her claim for compensation in an unspecified amount.

As I have found that the tenant's application contained partial merit, I award her recovery of the filing fee of \$50.00.

Due to the above I find the tenant has proven a monetary claim of \$126.16, comprised of \$76.16 for a PO Box rental and the filing fee of \$50.00.

Conclusion

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$126.16, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of such enforcement may be recoverable from the landlord.

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: February 28, 2013

Residential Tenancy Branch

