



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenant for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 25, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there losses or damages Under the Act, regulations or tenancy agreement and if so how much?
2. Is the Tenant entitled to loss or damages and if so how much?
3. Is the Tenant entitled to recover the filing fee for this proceeding?

Background and Evidence

The Tenant said this tenancy was to start on March 1, 2013, but they did not move in. The Landlord said the tenancy started on March 1, 2013 and the unit was made available to the Tenants for an early move in on February 17, 2013. The Landlord said the agreement was verbal at first and was to be a written a fixed term tenancy with an expiry date of March 15, 2014. The Tenant said the tenancy was month to month. Rent was \$1,350.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$675.00 by February 17, 2013. The Landlord said the Tenant ended the tenancy and removed their belongings out of the unit on March 16, 2013. The Tenant said they did not move in and they did not have any belongings in the rental unit.

The Tenant said the rental unit was not ready for them to move into because the Landlord had not removed his belongings and the unit was not clean. The Tenant continued to say that when they asked the Landlord to remove his and his mother's things the Landlord did not do anything. As a result the Tenant said the unit was not in a condition that she believed was ready to move into. The Tenant said in the first part of March, 2013 they told the Landlord they would not be moving in and they wanted the Landlord to return their money. The Tenant said the reason they were not moving in to the rental unit was that it was not clean and it had the Landlord's property in it.

The Tenant said they are applying for the return of \$675.00 which they paid as a security deposit and \$925.00 that they paid towards rent. The Tenant said they are also requesting the recovery of their \$50.00 filing fee for this proceeding.

The Landlord said he made an agreement to rent the unit to the Tenants on February 14, 2013 and the Tenant's husband paid the Landlord \$500.00 as partial payment of the security deposit. The Landlord said the Tenants could move in early and he gave the Tenants the key code on February 17, 2013. The Landlord said the Tenants inspected the unit around February 17 or 18, 2013 and requested him to make some repairs to light switches, which he did. The Landlord continued to say that the Tenants did not move into the unit March 1, 2013 and only paid a portion of the rent in the amount of \$925.00. The Landlord said by March 9, 2013 the Tenants said they were not moving into the unit and they wanted their money back. The Landlord said the Tenant did not give him proper notice to end the tenancy therefore the Tenant is responsible for the March, 2013 rent of \$1,350.00. On March 18, 2013 after the Tenants left the unit the Landlord changed the key code for security reasons.

Analysis

Section 12 (b) of the Act says a tenancy agreement has standard terms whether or not the tenancy agreement is in writing.

Section 16 of the Act says the rights and obligation under a tenancy agreement take effect from the date the tenancy agreement is entered into, **whether or not the tenant ever occupies the rental unit.**

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently I find a tenancy agreement did exist between the Tenant and the Landlord starting on February 14, 2013 when the security deposit was paid. As well I find the Tenant did not give the Landlord proper notice to end the tenancy therefore; the Tenant is responsible for the March, 2013 rent of \$1,350.00.

The Tenant should be aware that there are provisions in the Act to make a Landlord comply with the Act and make a rental unit fit for occupation.

As the Landlord has not made an application for any monetary compensation and the Landlord has been paid \$1,600.00 by the Tenant for rent and the security deposit; I order the Landlord to return \$250.00 to the Tenant forthwith. These funds are regarded as the balance of the security deposit after the rent for March, 2013 has been paid.

As the Tenant has only been partially successful in this matter, the Tenant is ordered to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

A Monetary Order in the amount of \$250.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: April 22, 2013

Residential Tenancy Branch

