



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PERFORMING ARTS LODGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of overpaid rent and heating costs, for the loss of personal belongings and for labor to pack belongings.

This hearing was conducted in person in Burnaby. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenancy started in February 2006 for a fixed term of one year. The tenant testified that she is 83 years old and is legally blind. The accommodation is subsidised housing and is allotted and rented based on a tenant's income. The tenant's portion of the rent was \$700.00. At the end of the term the parties entered into a second fixed term tenancy of one year. This continued every year until the final agreement was entered into on March 01, 2010. The tenant moved out on March 30, 2011.

The landlord filed copies of all the tenancy agreements. I showed the copies to the tenant and she agreed that she had signed these agreements. The tenant stated that even though she had signed in agreement of paying \$700.00 for rent, she was informed by the co-founder of the organisation that her rent would drop by \$100.00 after two to three months of tenancy. The tenant stated that this did not happen and for the entire term of five years she had overpaid rent in the amount of \$100.00 each month.

The landlord stated that the tenant addressed this issue with him several times through the tenancy. The landlord investigated the matter and found that the tenant was mistaken and that a drop in rent was never promised to her. The tenant did not have any documentation to support her version of events. The tenant testified that over the term of the tenancy, she had over paid rent in the amount of \$6,000.00

The tenant also stated that the rental unit did not have heat. She informed the landlord and the unit was inspected. The landlord found that the heating equipment was in good working order and that heat was available to the tenant inside the unit. The tenant stated that she is legally blind and did not realize that the thermostat was installed upside down until the end of tenancy. She stated that she had paid for heating every month of the tenancy, but did not receive any. The tenant is claiming \$2,500.00 that she believes she overpaid in heating costs.

The tenant also testified that she is a fashion designer and had packed ten years worth of work and three patents into a crate, prior to moving out. The movers placed the crate inside the new apartment, but when the tenant opened the crate, she found it empty. The tenant is claiming \$10,000.00 for the lost of these belongings.

The tenant also stated that she packed her boxes for her move to the new apartment. She stated that she did so very carefully and in an orderly manner. When she opened the boxes in the new apartment the contents were all messed up. The tenant stated that it appeared as if someone had “poured” the contents of one box into another. The tenant is claiming \$5,000.00 for the labour to pack and to restore order to the boxes.

The tenant is applying for the following:

1.	Overpaid rent	\$6,000.00
2.	Overpaid heating costs	\$2,500.00
3.	Loss of belongings	\$10,000.00
4.	Labor to pack boxes	\$5,000.00
	Total	\$23,500.00

Analysis

1. Overpaid rent - \$6,000.00

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant stated that a decrease in rent was promised to her but did not have any documentation to support her testimony. The landlord denied having promised the tenant a rent rebate of \$100.00 per month. Therefore I find that the tenant has not proven that she overpaid rent and accordingly her claim is dismissed.

2. Overpaid heating costs - \$ 2,500.00

The tenant rented the unit for five years even though she states that she did not have heating inside the unit. The tenant had the option of applying for dispute resolution during the term of the tenancy, to obtain an order to have heat restored, if not available. The landlord stated that the unit was inspected and it was found to have heating. Based on the testimony of both parties, I find that the tenant has not proven her case and therefore her claim is dismissed.

3. Loss of belongings - \$10,000.00

The tenant had movers transport her belongings from the rental unit to her new accommodation. She stated that the crate containing her belongings was empty when she opened it. I find that the tenant's crate was handled by persons other than the landlord and therefore the tenant has not proven that the landlord was responsible for the disappearance of her belongings. Accordingly, the tenant's claim is dismissed.

4. Labour to pack boxes - \$5,000.00

The tenant has not filed evidence to demonstrate that the landlord is responsible for the cost of labour to pack and/or unpack her boxes. Therefore I find that the tenant must bear the cost of doing so.

The tenant has not proven her application for a monetary order.

Conclusion

The tenant's application is dismissed in its entirety.

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: May 31, 2013

Residential Tenancy Branch

