



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC and FF

Introduction

This hearing was convened on an application made by the tenant on March 28, 2013 seeking a Monetary Order for loss or damage under the legislation or rental agreement and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order in compensation for the claims submitted and, if so, in what amounts?

Background and Evidence

According to the rental agreement, this was a two-year fixed tenancy set to run from June 15, 2012 to June 15, 2014, although the tenant did not move in until July 15, 2012. As the tenant was overseas at the time, the agreement was made by her sister on her behalf. Rent was \$2,800 per month and the landlord held security and pet damage deposits of \$1,400 each paid on April 29, 2012, since returned to the tenant.

The tenancy ended on February 14, 2013 pursuant to a Mutual Agreement to End Tenancy signed by the parties on December 13, 2013. The landlord was able to begin a new tenancy on March 1, 2013 at the lower rent of \$2,700 per month.

As a matter of note, this tenancy was the subject of a hearing on September 19, 2012 as a result of which the tenant was granted a rent reduction of \$490 for October and November 2012 for loss of use of facilities or services and \$140 per month thereafter pending repair of a common water garden.

During the hearing, the tenant gave evidence that she was forced to implore the landlord to enter the mutual agreement to end the tenancy after intermittent but disturbing mechanical noises forced her to stop sleeping in the large master bedroom in favour of a mattress in the den in mid-November 2012. She stated that, having come from recent assignments in troubled third-world countries, quiet enjoyment and security were of paramount importance to her in her living accommodation.

The landlord gave evidence that in mid-November 2012, she had sent a service person from an air conditioning company to test the air conditioning system as a possible source of the noise at a cost of \$226.24.

The parties concur that the landlord also set a plumber to the rental unit who was found that the source of the noise was not related to the plumbing. In addition, the landlord also wrote a written enquiry regarding a water fountain that been the source of ongoing shutdowns and repairs but was unable to gain verification that it was involved in the noise.

The landlord also sought the assistance of the strata council and was advised that they had no other complaints from residents of the 180-unit building regarding the noise.

The landlord also stated that she had heard no such concerns from the previous tenant or from the tenants who moved in after the subject tenancy had ended.

The tenant stated that both her housekeeper and her sister had verified her perception that there was a disturbing, intermittent noise that had also led to her sister sleeping in the den while she stayed in the unit during the tenant's absence.

The tenant also sought return of what she described as a fee for holding the rental unit for one month.

Analysis

The tenant claims and I find as follows:

Return of holding fee - \$2,800. The tenant stated that she did not intend to move in to the rental unit until July 15, 2012. The landlord stated that the tenant's sister had initially asked for the tenancy to begin on June 15, 2012, but had subsequently asked to for a change to July 15, 2012. She stated that she had had a number of applicants for the June 15, 2012 but had favoured the present tenant. I note that the written rental agreement states that the tenancy began on June 15, 2012 and I find that to be definitive and binding. This claim is dismissed without leave to reapply.

One-half of moving costs - \$1,150. The tenant stated that the noise that that made her sleeping in the master bedroom untenable had been the cause of her incurring an early move and that the landlord should compensate her for half of her moving cost. When parties agree to end a fixed term agreement early, it is common for both to experience unanticipated costs. In the present matter, for example, the landlord was not obliged to agree to the end of tenancy, but did so as an accommodation and experienced a loss, among others, of \$100 per month by reducing the rent for the successor tenant in compliance with her duty under section 7(2) of the Act to do whatever is reasonable to minimize her loss. I find that the tenant's loss was a result of her choice to leave the fixed term agreement early and the claim is dismissed.

Return of rent for loss of use of master bedroom - \$2,400. The tenant makes this claim for return of a third of the rent for three months for loss of use of the master bedroom from mid-November 2012 to the end of the Tenancy on February 14, 2013. I accept the evidence of the tenant that there was some noise that was of extreme annoyance to her. However, I also accept the evidence of the landlord that she took every reasonable step available to her to remediate the problem, that there were no like complaints from previous or successor tenants and that the strata council reported that there were no complaints from other units. Therefore, I find that the landlord took the most reasonable step available to her in signing a mutual agreement to end tenancy, releasing the tenant from the all obligations for the remaining 16 months of the tenancy. For that reason, and in the absence of definitive corroborating evidence of the noise, I must dismiss this claim without leave to reapply

Filing fee - \$100. Having found limited merit in the application, I decline to award the filing fee for this proceeding.

Conclusion

The application is dismissed in its entirety 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: June 24, 2013

Residential Tenancy Branch

