



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

At the outset of the hearing the Landlord stated that she has been named incorrectly on the Application for Dispute Resolution. With the consent of both parties, the Application was amended to reflect the Landlord's proper surname.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings. Although all of the evidence has been reviewed, only documents that are particularly relevant to my decision have been summarized in this decision.

Issue(s) to be Decided

Is the Tenant entitled to a rent refund?

Background and Evidence

The Landlord and the Tenant agree that they entered a tenancy agreement, which officially began on August 01, 2012. A copy of the tenancy agreement was submitted in evidence.

The Landlord stated that the monthly rent was \$1,100.00, inclusive of utilities. The Tenant stated that the monthly rent was \$1,100.00 plus \$100.00 in utilities. The tenancy agreement indicates the rent was \$1,100.00, inclusive of utilities.

The Tenant submitted a copy of an email, dated November 06, 2012, in which the Landlord informed the Tenant that she intends to reduce the rent after this tenancy ends to \$1,050.00 (\$950.00 rent plus \$100.00 utilities).

The Tenant stated that she did not intend to live in the rental unit until September 01, 2012; that she rented the unit for August 01, 2012 to ensure the unit would be available for her; that she did not view the rental unit prior to renting the unit; that a friend viewed the rental unit on her behalf prior to her agreeing to enter into a tenancy; that the Landlord had agreed to replace carpeting in one of the rooms; that she first viewed the unit on August 08, 2012 when she moved some personal property into the unit; that when she viewed the unit on August 08, 2012 she noted that the vanity for one of the bathrooms was in the "large bedroom", that the wall behind the vanity was under repair, that the carpet in the "large room" was in poor condition, that there was a portion of a roll of new carpet left in one of the rooms, that the paint was in poor condition, that cleaning was required; and there was a light fixture missing.

The Landlord and the Tenant agree that due to a miscommunication between the Tenant, the Tenant's friend who viewed the rental unit, and the Landlord, the Landlord installed new carpet in a room that was not in significant need of having the carpet replaced and that, upon learning that the Tenant's friend believed the carpet should be replaced in a different room, the Landlord installed new carpet in a second room.

The Landlord stated that she does not live in the province and that she did not have the opportunity to view the rental unit in August; that she did not understand there was an urgent need to prepare the rental unit as she understood the Tenant was not moving in on the first of the month; that she believed the vanity had been installed near the start of the tenancy; that upon learning from the Tenant that it had not been installed she made arrangements to have it installed; that upon learning that the rental unit was not clean she made arrangements to have it cleaned; that there was a second bathroom in the unit; and the Tenant could have moved into the rental unit in spite of any deficiencies.

In an email to the Tenant, dated August 15, 2012, the Landlord declared that the cleaning and repairs are complete. In an email dated September 06, 2012, the Tenant declared that when her friend viewed the unit on August 21, 2012 she noted that it was "noticeably different" than the last time she had viewed it.

The Tenant submitted a letter from the friend who viewed the rental unit on her behalf, in which she noted that the carpet in the main bedroom/garage was in "appalling" condition; that the kitchen floor and deck needed painting; and that the sink in the ensuite bathroom did not work. She declared that she again viewed the unit on August 21, 2012, at which time she noted that a toilet was being installed; that the vanity was not fully installed; there was a roll of carpet sitting in the living room; the sink in the

kitchen was not working; and that she spoke with the contractor on the telephone who informed her the rental unit had been thoroughly cleaned the previous week.

The Tenant submitted photographs of the rental unit that were taken by the Tenant's friend on August 21, 2012. These photographs show that the rental unit is in relatively good state of repair, with the exception of a toilet that is in the process of being installed and plumbing parts beside the kitchen sink.

The Tenant submitted photographs of the rental unit that she took on August 08, 2012. These photographs show that the rental unit is in relatively good repair, with the exception of a missing light fixture, a bathroom vanity that is not installed and is being stored in the "large bedroom"; a carpet that is dirty and not properly installed; a stained carpet; a roll of carpet in the living room; and some areas which need a small amount of cleaning.

The Landlord submitted a letter from the contractor who completed repairs in the rental unit. In the letter the contractor declared that he replaced mouldy drywall in a bathroom; that he addressed some "plumbing issues"; that he replaced carpet in the studio/bedroom; that the studio/bedroom was painted; and that he first met the Tenant early in August.

In the letter the contractor stated that the panel and lighting and a new heater were installed. He stated this was "approximately August 15th". Although it is not clear, it appears that the date refers to when the panel and lighting and a new heater were installed.

In the letter the contractor stated that cleaners were hired. He stated that work was completed by mid August. Although it is not clear, I interpret that this means all of the aforementioned repairs/cleaning were completed by mid-August.

In a written submission the Tenant declares that the dates noted in the contractor's letter are incorrect, which she based on a conversation she had with the contractor, in which he told her the dates were approximations, and on the evidence of her friend who viewed the rental unit on August 21, 2012. She stated that she did not meet the contractor until September of 2012, which is when she reported her concerns with a heater and some lighting.

The Tenant submitted several emails exchanged between the parties which indicate:

- That the Landlord informed the Tenant that the rental unit was to be painted on August 01, 2012, with the second coat to be applied on August 02, 2012
- That the Landlord informed the Tenant that repairs to the sink were planned for July 30, 2012
- That the Landlord informed the Tenant that the carpet was to be replaced on July 31, 2012 and that it had been installed by August 01, 2012

- That the Landlord informed the Tenant that when the bathroom vanity was removed the plumber determined that the drywall needed to be repaired, which delayed the painting of the ensuite
- That on August 11, 2012 the Landlord offered to terminate the tenancy and refund the deposit
- That on August 11, 2012 the Landlord offered to return ½ month's rent at the end of the tenancy as gesture of good will if the tenancy continues
- That on August 15, 2012 the Landlord again offered to return the security deposit and the rent for August if the Tenant wished to cancel the agreement

Analysis

I find that the Landlord and the Tenant had a tenancy agreement that required the Tenant to pay monthly rent of \$1,100.00, inclusive of utilities. I favour the testimony of the Landlord over the testimony of the Tenant in this regard, as the Landlord's testimony is corroborated by the tenancy agreement submitted in evidence. I find the email, dated November 06, 2012, does not clearly corroborate or refute the version of events provided by either party.

As this tenancy began on August 01, 2012, I find that the Tenant was entitled to move into the rental unit on that date, regardless of when she elected to move into the unit.

On the basis of the undisputed evidence, I find that the rental unit was not completely ready for occupancy on August 01, 2012. As the Tenant made no attempt to move into the rental unit until August 08, 2012, I find that she was not inconvenienced in any way by any repairs that were being made between August 01, 2012 and August 07, 2012. I therefore find that she is not entitled to compensation for any inconvenience associated to those repairs.

On the basis of the testimony of the Tenant, the letter from the Tenant's friend, and the photographs submitted in evidence, I find that the rental unit was not completely ready for occupancy until approximately August 21, 2012. I specifically note, however, that the deficiencies with the rental unit were relatively minor and that they did not prevent the Tenant from moving into the rental unit. In my view, the Tenant could have moved into the rental unit and the Landlord could have remedied the deficiencies while the Tenant was living there.

I accept that the ensuite bathroom was not fully functional until on, or about, August 21, 2012; that some relatively minor cleaning was required; that some spare carpet was left in the rental unit; and that a light fixture was missing. I note that there was another bathroom in the rental unit and that the Tenant did not live in the unit until after the ensuite bathroom was made functional. I find that the inconvenience related to these deficiencies was therefore not significant, and I find the Tenant is only entitled to compensation in the amount of \$100.00 for any inconvenience related to these deficiencies.

I decline to award compensation for any inconvenience related to the installation of carpet in the rental unit. In reaching this conclusion I was influenced, to a large degree, by the fact that any inconvenience related to a delay in installing carpet was offset by the fact that the Tenant benefitted from new carpet in two rooms, although the Landlord only promised to install carpets in one room.

I find that the Tenant's Application for Dispute Resolution has some merit and I therefore find that she is entitled to recover the fee for filing this Application.

Conclusion

The Tenant has established a monetary claim of \$150.00, In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: August 30, 2013

Residential Tenancy Branch

