



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, O, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking an order of possession and a monetary order. The tenant is seeking to have a One Month Notice for Cause set aside. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or the tenancy agreement?

Background and Evidence

The tenancy began on or about May 15, 2012. Rent in the amount of \$985.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$492.50. This location is a four unit “duplex” with two units above and two units below.

The landlord gave the following testimony:

The landlord stated that she had a plumbing company inspect the piping in the subject property in June 2012 and was told there were no issues with the plumbing. The landlord stated that on the night of August 13, 2013 the tenants’ daughter had a party in the unit into the following morning. The landlord stated that the unit below the subject tenant was vacant. The landlord stated that she was to meet the potential renter for the

unit below the subject unit on August 14, 2013 to sign the tenancy agreement as she had rented it for August 15, 2013. The landlord stated that upon entering the unit she discovered the kitchen ceiling had fallen to the ground and that the ceiling fan was also damaged. The landlord stated that she had the local police attend to the unit upstairs. The landlord stated that the investigating police officer had called her and advised that he felt the damage to the downstairs unit was a result of the subject tenant's daughter overflowing the soaker tub and splashing the water onto the floor. The landlords are seeking the recovery of costs to repair and clean the unit in the amount of \$1836.58.

The tenant gave the following testimony:

The tenant adamantly disputes the claims made by the landlord. The tenant stated that since she has moved into the unit there have been three other issues with water leaks that were not found or addressed. The tenant stated that she immediately notified the landlord of the issues, yet the landlord did nothing to correct the situation. The tenant stated that the home is 100 years old and that the landlord is being unreasonable to rely on an inspection from June 2012. The tenant stated that her unit does not have any signs of water damage to her floors, rugs or to items that were on the floor. The tenant stated that she attempted to work with the landlord and suggested that the soaker tub overflow drain or the spout be looked at as a possible issue but the landlord declined.

Analysis

At the outset of the hearing the parties came to an agreement that the tenancy will come to an end on January 31, 2014. The tenant was in agreement that the landlord should be entitled to an order of possession for that date. Based on that agreement I dismiss the tenants' application to set aside the notice and find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The parties were not in agreement with the monetary claim as made by the landlord.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord is relying on the photos taken by the police officer as well as the voice mail message left by the police officer that he was of the opinion that the damage to the unit below was the result of the subject tenants' daughter overflowing the soaker tub. The landlord is also relying on the plumbers' inspection from June 2012 to show that the plumbing was in good working condition.

In reviewing the testimony and documentary evidence submitted, the landlord has failed to satisfy #2 as listed above. I am not satisfied that the landlord has provided sufficient evidence to support their claim. The police officer made an assertion to what he believes the cause of the water damage was from but I have no evidence before me that that police officer is an expert in plumbing related issues. I accept that the photos reflect a messy unit one in which it appears a party took place but they do not depict the damage as described by the landlord. As for the plumbing inspection from June 2012, I find that information dated and not helpful. In addition the landlords submitted that the damage was either done by overflowing the tub or a hose that may have been left running. The landlords own evidence has some inconsistencies and doubt. The tenant submitted an e-mail thread with the landlord that refers to some ongoing leaking water issues. Based on all of the above and on the balance of probabilities, I must dismiss

the landlords' monetary claim for the insufficient and somewhat contradictory evidence presented.

I order that both parties must bear the cost of their filing fee as neither was successful in their application.

Conclusion

The landlord is entitled to an order of possession. The landlords' monetary claim is dismissed without leave to reapply.

The tenants' application is dismissed.

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: October 24, 2013

Residential Tenancy Branch

