



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SG &
KBS DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, MNDC, FF, O

Introduction

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

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 6, 2013. Based on the evidence of the Tenant, I find that the Landlords were 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. Is there a loss of damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?
3. Is the Tenant entitled to an Order of Possession?

Background and Evidence

The Tenant said this tenancy was to start started on October 1, 2013 as a fixed term tenancy for 6 months. Rent was \$880.00 per month payable in advance of the 1st day of each month. The Tenant said she paid a security deposit of \$440.00 on September 27, 2013 and a pet deposit of \$440.00 on October 1, 2013. The Landlord said there was no tenancy as the Tenant’s application to rent was not approved. The Landlord said the application to rent was declined on September 29, 2013 and the Tenant’s cheques were not cashed.

The Tenant said she completed a rental application form on September 25, 2013 and the Property Manager phoned her on September 26, 2013 and said her application to rent was approved and she should deliver cheques for the security deposit of \$440.00, for the pet deposit covering two dogs for \$440.00 and 6 post dated cheques for the 6 month term of the tenancy. The Tenant said she delivered the cheques on September 27, 2013. The Tenant continued to say that she believed that the tenancy was confirmed and as a result the Tenant said she purchased furniture for the rental unit on September 29, 2013. The Tenant said she submitted the receipts for the furniture purchases to support her belief that the tenancy was confirmed. Further the Tenant said on September 29, 2013 the Landlord told her that her rental application was declined and they were not going to rent the unit to her.

The Tenant said as a result of this information she had to find alternative accommodation. The Tenant said she is living with a relative who is charging her \$120.00 per day for herself and her dogs. The Tenant said the arrangement is only good until the end of October, 2013 and she has not paid any rent to the owner of the house as of yet.

The Tenant said that because the Landlord accepted her cheques for the deposits and the post dated cheques for rent for 6 months the tenancy was a valid contract. When the Landlord did not provide the rental unit to her he broke the contract or tenancy agreement and the Landlord is now responsible for her expenses for alternative accommodation. The Tenant said she is claiming \$120.00 per day for 23 days in October, 2013 in the amount of \$2,760.00 and she is requesting to recover the filing fee of \$50.00 that she has already paid.

The Landlord said there were four applicants to rent the unit in question and the Landlord collected cheques from all of the applicants as part of the application process. The Landlord said he does not consider accepting cheques as confirmation of a tenancy or a contract. The Property Manager said that he did not tell the Tenant her rental application was approved on September 26, 2013 and that they declined her application on September 29, 2013 as the application was missing some information.

The Landlord said that because there is no tenancy agreement between the Applicant and the Respondent the Landlord is not responsible for the Tenant's accommodation expenses for October, 2013 or for that matter any time.

The Landlord continued to say that the unit is rented to different tenants now.

Analysis

In this situation the Tenant says she had a verbal contract/tenancy agreement with the Landlord. The Tenant said the contract was binding on September 27, 2013 when she gave the Landlord her cheques for the security, the pet deposit and the post dated cheques for the 6 month term of the tenancy. It is the Tenant's belief that when the Tenant was not allowed to move into the rental unit the Landlord did not perform his obligations under that contract/tenancy agreement therefore the Landlord is responsible for the Tenant's accommodation expenses for October, 2013. The Landlord said that when he accepted the cheques from the Tenant on September 27, 2013 it was part of the application process and did not confirm a tenancy agreement or contract.

The main question in this dispute is whether a contract/tenancy agreement existed between the Applicant and the Respondent. Section 16 of the Act says the rights and obligations of a landlord and tenant 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. I accept the Tenant's testimony and evidence that the contract/tenancy agreement became binding on both the Tenant and the Landlord on September 27, 2013 when the Landlord accepted the Tenant's cheques for the security and pet deposits and for 6 posted dated cheques for 6 months of rent. Whether the cheques were cashed or not does not affect the intent of the parties which was to enter a tenancy agreement. When the Landlord declined the Tenant's rental application on September 29, 2013, it was after the fact of entering a contract/ tenancy agreement with the Tenant on September 27, 2013. Consequently the Landlord broke the contract/tenancy agreement and the Landlord is responsible for not providing the rental unit to the Tenant.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

In this situation I accept that the Tenant has suffered a loss and that the Landlord broke the contract/tenancy agreement, but as the Tenant has not paid any accommodation expenses for October, 2013 the Tenant has not proven and verified the loss. As a result I dismiss the Tenant's claim for \$120.00 per day in a total amount of \$2,760.00 for accommodation expenses, because the Tenant has not incurred a loss to date.

Further I accept the Tenant's evidence that the Landlord did not provide services and facilities that were promised in the contract /tenancy agreement; therefore I find the Tenant has established a loss and grounds to receive compensation. The intent of the contract/tenancy agreement was a fixed term for 6 months therefore the Landlord is responsible to provide the rental unit for the full term of the contract/ tenancy agreement. As well the Tenant is responsible to minimize or mitigate the loss;

therefore I find that the Landlord will compensate the Tenant for 2 month's rent in the amount of $2 \times \$880.00 = \$1,760.00$.

With respect to the Tenant's request for an Order of Possession I find the Landlord no longer has possession of the rental unit as it is rented to other tenants and therefore it is not reasonable to award the Tenant possession of the rental unit. It should be noted that if the rental unit was vacant the Tenant would have a legitimate possibility for obtaining an Order of Possession. I dismiss without leave to reapply the Tenant's request for an Order of Possession of the rental unit.

As the Tenant has been partially successful in this matter, the Tenant is also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenant will receive a monetary order for the balance owing as following:

Compensation for loss of Facilities and Services	\$ 1,780.00
Recover filing fee	\$ 50.00
Subtotal:	\$1,830.00
Balance Owing	\$ 1,830.00

Conclusion

A Monetary Order in the amount of \$1,830.00 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: October 23, 2013

Residential Tenancy Branch