



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0775593 British Columbia Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNR, MNSD, MNDC, FF

Tenant: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation; for all or part of the security and pet damage deposits and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for the return of rent; for the cost of emergency repairs; for compensation; for the return of the security and pet damage deposits and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on July 31, 2013 for a 12 ½ month fixed term tenancy beginning on August 16, 2013 for a monthly rent of \$3,000.00 due on the 1st day of each month with a security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00 paid.

The tenancy agreement includes a clause (2a) that states if the terms of the lease are broken the tenant will pay the fees for re-renting the rental unit which is the equivalent of ½ month's rent (\$1,500.00).

The tenant took possession of the rental unit on August 16, 2013 after paying the landlord the two deposits and \$1,500.00 for rent for the period of August 16, 2013 to August 31, 2013. The tenant wrote the landlord a notice to end tenancy on August 19, 2013, effective immediately.

The tenant's letter states that:

"The overwhelming smell of marijuana in the house has caused health problems with my children and myself even with our short visits while cleaning and moving into the premises; the smell has resulted in headaches, sore throats and nausea.

Your lack of disclosure with regards to marijuana having been in the house is a breach of our contract."

The parties agree that the landlord was aware and had informed the tenant that there had been a marijuana grow operation on the property; that the operation had been in the barn; and that the barn had burned down.

The parties agree that a move in condition inspection was completed and signed by the parties prior to the tenant moving in. The tenant submits that once they were moving their belongings in they notice several deficiencies in the rental unit including the smell of marijuana.

She stated that while they were still taking short trips to the rental unit to move their belongings and clean they would get sick in the way of headaches, sore throats and nausea. She states she contacted their doctor who indicated it was likely an allergic reaction to mould. The tenant then sent the above noted letter to the landlord.

The tenant seeks return of the rent for the period of August 16, 2013 to August 31, 2013 and the return of both deposits.

The landlord submits that he immediately tried to get new tenants and he did secure new tenants on August 26, 2013 to move in on September 16, 2013. The landlord seeks rent from the tenant for the period of September 1, 2013 and September 16, 2013 in the amount of \$1,500.00 and to recover the costs of re-renting the unit as per the tenancy agreement in the amount of \$1,500.00.

The tenant testified that as a result of needing to not move in to the rental unit and the fact that she had to move out of her previous home no later than August 28, 2013 she had to put her belongings into storage and look for a new place to live. The tenant testified she found a new location on September 3, 2013. The tenant seeks compensation in the amount of \$692.00 for temporary storage. The tenant did not provide any receipts for storage.

The tenant also submits that there was a problem with the garage door and when she told the landlord about it he told her to have it fixed. The tenant seeks compensation in the amount of \$110.00 for these repairs. The tenant did not provide any documentary evidence of the problem or confirming any repairs made or paid for. The landlord testified the tenant never raised any issues regarding the garage door.

Analysis

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Despite the tenant's testimony that she felt the rental unit was causing her and her children medical problems she has provided no evidence to confirm these claims. Even if there is a problem in the rental unit, I find the tenant failed to inform the landlord of the problems and give him an opportunity to look into the problems before sending him a notice of her intention of ending the tenancy.

Had the tenant either contacted the landlord to advise him of the problem or, in compliance with Section 45(3), she had notified the landlord that she felt he was failing to comply with a material term of the agreement; given the landlord a reasonable time to correct the alleged breach the landlord would have had an opportunity to investigate; correct any problems; and work out a temporary arrangement until it was correct.

As the tenant failed to comply with Section 45(3) I find she is obligated to pay rent to the landlord for duration of the fixed term as stated in the tenancy agreement subject only to the landlord's obligation to mitigate any losses.

I accept the landlord took reasonable steps to mitigate his losses and was able to re-rent the unit effective September 16, 2013 thus limiting the tenant's financial obligations for rent to September 15, 2013. I find the landlord is entitled to rent in the amount of \$3,000.00 for the period of August 16, 2013 to September 15, 2013.

As the tenant had paid the landlord rent in the amount of \$1,500.00 for the period of August 16, 2013 to August 31, 2013 I find the landlord is entitled to \$1,500.00 from the tenant for the period September 1, 2013 to September 15, 2013. I also find the tenant is not entitled to a return of rent for the period of August 16, 2013 to August 31, 2013.

In addition, I find the tenant has breached the tenancy agreement by ending the tenancy prior to the end of the fixed term and as such the landlord is entitled to the costs of re-renting the unit as agreed upon in clause 2a of the tenancy agreement, in the amount of \$1,500.00.

In regard to the tenant's claim for storage costs, as I have found that the tenant is the party who breached the tenancy agreement and chose not to move into the rental unit without providing adequate notice of any problems with the rental unit sufficient for her to end the tenancy I find the landlord cannot be held responsible for the cost of storage the tenant may have incurred based on her decisions. Further, even if she were entitled to recover these costs she has provided no evidence to support the value of her claim.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety or anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

In relation to the tenant's claim for repairs to the garage door, despite her submission that she had informed the landlord of a problem and he instructed her to have it fixed, the tenant has failed to provide any evidence to substantiate this instruction.

As the landlord has testified that the tenant did not advise him of any problems, the burden is on the tenant to provide sufficient evidence to establish her position. In the absence of any other evidence I find the tenant has failed to establish any problems with the door that required fixing or that she reported it to the landlord. Further, again the tenant has failed to provide any evidence to support the value of her claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,050.00** comprised of \$1,500.00 rent owed; \$1,500.00 re-renting costs and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and pet damage deposits held in the amount of \$3,000.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$50.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

Based on the reasons noted above, I find the tenant has failed to establish any portion of her claim and I dismiss her Application 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: October 11, 2013

Residential Tenancy Branch

