



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Central City Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This was a hearing with respect to the tenant's application for a monetary order. The hearing was conducted by conference call. The tenant attended with her advocate and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Kamloops. The tenancy began on June 1st 2011. Monthly rent was \$850.00 and the tenant paid a \$425.00 security deposit at the start of the tenancy. The tenant gave written notice on May 9, 2013 that she intended to move out of the rental unit on May 31, 2013. She moved out on May 24th. Because the tenant did not give a full month's notice in writing to end the tenancy, the landlord demanded and received payment of rent for the month of June. In a letter to the tenant the landlord said in part:

(name of tenant) as I have explained that this is not a proper 30 day notice as per your tenancy agreement dated June 1 2011; therefore I must inform you that you will be responsible for the suite for the months of May and June 2013..

The landlord charged the tenant the sum of \$124.95 for carpet cleaning and deducted the said sum from the tenant's security deposit. The tenant said that the landlord told her that if the apartment could be re-rented in June the landlord would return some or all of her rent payment for June.

The tenant testified that she returned to the rental unit on or about June 9th to pick up mail and discovered that the landlord had entered the rental unit and was performing renovations. She said the renovation work included changing the floor, repainting and changing the bathroom. The tenant said that she did not give the landlord permission to go into the unit to carry out remodeling work. She also objected to the charge for carpet cleaning because she said that given the scope of work performed by the landlord and the amount of dirt and dust generated, the carpet would have needed cleaning due to the landlord's work.

The landlord's representative responded; he denied that the work done by the landlord was as great as suggested by the tenant. He said that the tenant signed an acknowledgement allowing the landlord to clean the carpets and deduct the charge from her security deposit. The landlord said in a written submission that a: "May 31 24 hour notice to enter was posted on suite 205, for the purpose of general repairs. (attached)"

The landlord submitted a copy of a document titled: "notice to tenants" that was posted on the door of the rental unit on May 31st. The notice advised that the landlord would enter the rental unit on Monday, June 1, 2013 at 9:00 A.M: "for the express purpose of repairs this is estimated to take 2 -3 days. This notice is to comply with the requirements of the Residential Tenancy Act of British Columbia. You are entitled to be present when we enter."

Analysis

I accept the tenant's testimony that when she returned to the rental unit, the landlord was engaged in work to the unit that included painting, floor replacement and bathroom improvements. The tenant paid rent for the full month of June, yet, according to the notice submitted by the landlord, the landlord commenced work on the rental unit starting on the morning of June 1st. I note that the notice left by the landlord had no chance of coming to the attention of the tenant before the landlord entered the unit. I find that this work performed by the landlord was not accurately described as a repair and the work was incompatible with the landlord's obligation to mitigate its potential loss of revenue by seeking to re-rent the unit commencing June 1st. As it turns out the tenant was in effect subsidizing the landlord's refurbishment of the rental unit after she moved out, by her payment of rent while the landlord was engaged in work to improve the unit.

I find that the tenant is entitled to have the rent paid for June reimbursed to her, because, having given notice on May 9th and having paid rent for June as demanded, the landlord then embarked upon work that was incompatible either with the tenant's

continued occupation of the unit, or with the landlord's obligation to find a new tenant to occupy the unit beginning on June 1st. The landlord was not at liberty to charge the tenant rent for June when it intended to immediately start work to improve the rental unit rather than attempt to re-rent for June 1st.

I do not accept the tenant's argument that she should be reimbursed for carpet cleaning because she agreed to this charge and carpet cleaning would be expected to be performed by a tenant after a tenancy of this duration.

Conclusion

I grant the tenant a monetary award under section 67 in the amount of \$850.00, being the amount paid for June rent. The tenant did not request repayment of the filing fee for her application and I make no order with respect to the filing fee. This order may be registered in the 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: October 22, 2013

Residential Tenancy Branch

