



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to return the tenant's personal possessions and a monetary order for money owed or compensation for damage or loss.

The tenant and landlord RM appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to return the tenant's personal possessions and to monetary compensation?

Background and Evidence

The tenant gave undisputed evidence that she moved into the rental unit on November 1, 2012, that she vacated the rental unit on June 18, 2013, monthly rent was \$1050, and that she paid a security deposit of \$525. The tenant also explained that when she first began this tenancy, she had another roommate. Due to difficulties with that roommate, another roommate moved in, and that these two parties signed a new tenancy agreement, with a tenancy starting on April 1, 2013.

The tenant's monetary claim is as follows:

Security deposit	\$525
Illegal eviction	\$525
Lost or damaged personal property	\$6000
Half of the hydro bill	\$53.50
Fire wood	\$200
Total	\$7303.50

The tenant's relevant documentary evidence included a copy of a tenancy agreement, a demand letter to the landlords, a written response from the landlords, a statement signed by the tenant on June 18, 2013, agreeing that all her possessions had been removed from the rental unit, a written notice to her roommate, dated June 10, 2013, informing the roommate she was leaving at the end of July, and a hydro bill.

The landlord's relevant documentary evidence included a written summary in response to the tenant's application, a statement from the tenant's roommate, a co-tenant, the same statement signed by the tenant on June 18, 2013, and a different tenancy agreement showing these two tenants' names.

The parties submitted the following evidence:

Security deposit-The tenant submitted that the security deposit has not been returned to her. The tenant submitted that her roommate, a co-tenant, had not paid any of the security deposit as the roommate moved in months after the tenant did, and therefore the tenant did not contribute to the security deposit.

The landlord submitted that the security deposit was not returned to the tenant due to the damage by the tenant.

Illegal eviction-The tenant submitted that although she left a note to her roommate, a co-tenant, that she was vacating at the end of July, her roommate's behaviour became

unbearable. The tenant submitted that the roommate was a bully, that she used threatening, unacceptable behaviour and that due to this, she texted the landlords in June and told them she was leaving on June 18, 2013.

The tenant said that she left many of her belongings behind, as the landlords came to the rental unit, and in a short time, forced a few of her items in the car.

The tenant submitted that she was under duress when she signed the June 18, 2013, statement agreeing that all her personal possessions had been removed.

The landlord submitted that the tenant did not provide them with a written notice that she was leaving, and instead the tenant phoned them in mid June and said she was leaving by June 18.

The landlord submitted that despite not receiving a written, 1 month's notice that she was vacating, they did everything to accommodate her, and helped her move.

The landlord denied the tenant was under duress in signing the June 18 document.

Lost or damage personal property-The tenant submitted that she did not have enough time on the day of her move to realize that she did not have all her personal property, due to being rushed by the landlords.

The tenant submitted that her move-out was so quick and that she was under duress, she was compelled to give a lot of her belongings away or have them hauled off.

In response, the landlord expressed surprise that the tenant would claim for any loss as on the day of the move, the tenant said she wanted closure and willingly signed the statement agreeing that she had all her belongings. The landlord said the tenant was so happy with their accommodating her insufficient notice to vacate, she was hugging the landlords on the day of the move.

The landlord further submitted that they were there on June 18 to help her move and that they kept asking her what items she wanted to take with her.

The landlord denied that any of her belongings would total to \$6000.

The landlord did agree that some items were still in the rental unit and that she could retrieve them. These items are a desk, chair and the firewood.

During the hearing, the parties agreed that the tenant would attend the rental unit at 12:00 noon on October 30, 2013, to collect those items.

Hydro-The tenant submitted that she was owed one half of the hydro by her roommate, as the bill was in her name.

The landlord said that the tenant was responsible for hydro and had nothing to do with them as landlords.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Security deposit-Although the tenancy agreement submitted by the parties show that this tenant and the other tenant, the roommate, began their tenancy on April 1, 2013, for a three month fixed term basis, there was no dispute that this tenant paid the entire security deposit prior to the current co-tenant moving in.

Under section 44 of the Act, one way a tenancy ends is when the tenant vacates the rental unit, as is the case here when the tenant moved out on June 18, 2013.

In the case before me, I find that when the tenant vacated the rental unit, this tenancy ended, as the two listed tenants were co-tenants of the rental unit and therefore jointly and severally share in the rights and responsibilities of the tenancy. I was not made aware of whether or not the landlords entered into a new tenancy agreement with the remaining tenant.

As I have found that this tenancy ended on June 18, 2013, when the tenant vacated, I find that the landlords were required to follow section 38 of the Act in dealing with the tenant's security deposit and failed to do so. A landlord is not allowed to retain the tenant's security deposit for damage to the rental unit, unless they file an application for dispute resolution claiming against the security deposit within 15 days of the end of the tenancy or when they have received the tenant's written forwarding address, or have authority from an Arbitrator with the Residential Tenancy Branch ("RTB") to do so or the tenant's permission to withhold their security deposit. I do not find that to be the case here.

I therefore find that the tenant is entitled to a return of her security deposit of \$525.

Illegal eviction-I find no basis to award the tenant monetary compensation for this claim, as it was the tenant who phoned or texted the landlords and informed them she was moving early without prior notice or warning. I find I cannot award the tenant compensation for actions taken by the tenant and I find no violation of the Act or the tenancy agreement by the landlords.

I therefore dismiss the tenant's claim for \$525.

Lost or damaged personal property and firewood-I find the tenant presented insufficient evidence that she was under duress in signing a document acknowledging that she had removed all her personal possessions from the rental unit. I accept the evidence from the landlord that they assisted the tenant in moving and that she had gathered all belongings she wanted to move. I find no violation of the Act or the tenancy agreement by the landlords and I therefore dismiss the tenant's claim for \$6000 for personal property and \$200 for firewood.

Nonetheless, the parties agreed on a specific date in order that the tenant could collect her desk, chair and firewood.

Hydro bill-I find the co-tenants were responsible for their hydro usage, and that the hydro bill was in the tenant's name.

It is up to the tenant to seek compensation from her former roommate, the co-tenant, for the hydro bill. I find no violation of the Act or the tenancy agreement by the landlords.

I therefore dismiss the tenant's claim for \$53.50.

Due to the above, I find the tenant is entitled to a total monetary award of \$525, comprised of her security deposit in that amount.

Conclusion

The tenant's application for monetary compensation is granted in part and dismissed in part.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$525, which I have enclosed with the tenant's Decision.

Should the landlords fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

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* and is being mailed to both the applicant and the respondent.

Dated: October 28, 2013

Residential Tenancy Branch

