



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 06, 2014, by the Tenant to cancel a Notice to end tenancy for unpaid rent and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Has the Tenant vacated the property and withdrawn her request for an Order of Possession?
- 2) Has the Tenant met the burden of proof to be granted a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony confirmed that the parties entered into a verbal month to month tenancy that began in February 2012. Rent was payable on the first of each month in the amount of \$950.00 and the Tenant paid \$300.00 as the security deposit.

The Tenant testified that she made two payments towards the security deposit, the first was for \$300.00 and was paid in cash to secure the rental unit and the second payment was for \$175.00 and was paid when she first moved in. The Landlord denied receiving as second payment and insisted that he only ever received \$300.00 as the security deposit.

The Tenant submitted that she was evicted out of the unit on February 5, 2014, by a bailiff; therefore, she was withdrawing her request to cancel the eviction notice. She said she wished to proceed with her monetary claim for \$500.00 and that claim relates to the inconvenience she suffered from the stove not working, the fridge leaking, and the cleanup she had to do after the wall was repaired in her bedroom.

The Landlord testified that he found the Tenant's application misleading because it was hard to determine if the amount claimed was \$1500.00 or \$500.00 and because the Tenant did not explain what the monetary claim related to in the Details of the Dispute on her Application for Dispute Resolution. He responded to the Tenant's testimony by saying it was all false. He attempted to enter the unit and complete the repairs but the Tenant had refused him entry so during the November 2013 dispute resolution hearing they agreed that the Landlord would be allowed access into the unit to conduct the repairs on the following day. The Landlord argued that he attended the unit, as agreed, with an appliance tech and a drywall person, to complete the repairs.

In closing, the Tenant said she could not submit documentary evidence prior to this hearing as she was busy moving. The Tenant declined to provide a service address for this decision and stated she would make arrangements to pick up the decision.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the undisputed terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

After careful consideration of the foregoing, I find the Tenant provided insufficient evidence to prove her monetary claim. Accordingly, her claim is dismissed, without leave to reapply.

Conclusion

The Tenant withdrew her request to cancel the Notice to end tenancy issued January 2, 2014.

I HEREBY DISMISS the Tenant's monetary claim, without leave to reapply.

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: February 19, 2014

Residential Tenancy Branch

