



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0855850 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for return of all or part of the security deposit, and to recover the filing fee.

The tenant and two co-owners of the named landlord company (the “landlords”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

The landlords confirmed that they received the tenant’s one page of evidence and that they had the opportunity to review that evidence prior to the hearing. The tenant confirmed that she received evidence from the landlord and that she had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matter

The tenant has applied for the return of double her security deposit under the *Act*, however, in the previous Decision dated January 21, 2010, the file number of which has been referenced on the cover page of this Decision, the landlord has already been ordered to retain the tenant’s full security deposit. Therefore, **I dismiss** the tenant’s application for double the return of her security deposit, as the tenant’s security deposit has already been dealt with under the *Act*.

Issue to be Decided

- Is the tenant entitled to compensation under the *Act* in the form of a monetary order, and if so, in what amount?

Background and Evidence

The parties agreed that a month to month tenancy agreement began on July 1, 2009. Monthly rent of \$1,200.00 was due on the first day of each month.

The tenant has claimed \$2,400.00 which is the equivalent of rent for two months in lieu of “notice not given”. During the hearing, the tenant stated that she is seeking the recovery of rent paid for the months of June 2012 and July 2012.

The parties agreed that a fire took place in the home on May 22, 2012. The landlord stated that the fire department was unable to determine the source of the fire. The tenant stated that she vacated the rental unit after the fire on May 22, 2012. The landlord stated that the tenant did not vacate the rental unit until the end of June 2012 as the tenant left her personal items in the rental unit until that time. The tenant confirmed during the hearing that she did not have tenant’s insurance.

The landlord was granted an order of possession dated January 21, 2010, although did not enforce that order of possession and the tenancy continued for more than two years before the fire took place on May 22, 2012.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Regarding the order of possession, **I find** the landlord reinstated the tenancy by not enforcing the order of possession dated January 21, 2010, and permitting the tenancy to continue for more than two more years until the fire occurred on May 22, 2012.

In the matter before me, the tenant confirmed that she did not have tenant's insurance and **I find** that the tenancy became frustrated due to a fire in the rental unit on May 22, 2012, the cause of which is not known. As a result of the above, **I find** the tenancy ended as of May 22, 2012, the day of the fire, and was not the fault of either party, as the cause of the fire was unknown. Based on the above, **I find** the tenant has failed to meet part one and four of the test for damages or loss as the tenant has failed to prove that the landlord breached the *Act*, regulation or tenancy agreement, and failed to minimize that damage or loss by neglecting to have tenant's insurance. The landlord is not the tenant's insurer. Failure to arrange for tenant's insurance is the fault of the tenant, and not the landlord. Therefore, **I dismiss** the tenant's claim for compensation due to insufficient evidence, **without leave to reapply**.

As the tenant's claim did not have merit, **I do not grant** the tenant the recovery of her filing fee.

Conclusion

The tenant's claim has been dismissed, due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 24, 2014

Residential Tenancy Branch