



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an Application by the tenant seeking monetary compensation for damages including moving costs due to the landlord's failure to fulfill the terms of the tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the tenant is entitled to monetary compensation for loss including moving costs?

Background and Evidence

The tenancy began on November 28, 2012 and the rent is \$750.00. The tenancy ended on November 27, 2013 and the tenant's security deposit was refunded.

The tenant testified that they were served with a One Month Notice to End Tenancy for Cause ending the tenancy effective November 30, 2013 on the basis that:

"Rental unit/site must be vacated to comply with a government order."

The tenant testified that they contemplated disputing the Notice but after checking with the municipality they confirmed that the landlord had knowingly rented a unit that was not permitted under the municipal bylaws and therefore the unit genuinely had to be vacated to comply with the bylaws. A copy of the municipal notification is in evidence.

According to the tenant, the landlord did verbally agree to compensate the tenant in the amount of \$750.00, but then refused to give them these funds because the tenant would not sign an acknowledgement and did not furnish any receipt from the movers. The tenant pointed out that they had done the moving out work by themselves at significant cost and inconvenience that included taking time off work.

The landlord's position is that they followed the Act by serving a valid One Month Notice to End Tenancy for Cause. The landlord acknowledged that they did offer the tenant compensation, but the tenant declined to sign the written statement and did not surrender a receipt for moving. The landlord testified that the tenant also still owed utility costs of \$134.00.

The landlord stated that they are still willing to compensate the tenant in the amount of \$750.00, minus outstanding utility arrears of \$134.00.

The tenant is not amenable to accepting the landlord's offer.

The tenant's position is that, because of the landlord's alleged failure to fulfill the material terms of the tenancy contract thereby forcing the end of the tenancy, and the fact that the landlord did agree to pay \$750.00, the tenant deserves to be granted the full \$750.00 in compensation.

Analysis

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations **or the tenancy agreement**, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find that the tenant bears the burden to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the landlord.

In the case before me, the tenant is claiming that, because the landlord could not fulfill the terms of their tenancy agreement, the tenant should be compensated accordingly.

I find that the landlord did comply with the Act by issuing a valid and enforceable One Month Notice to End Tenancy for Cause when they received the Notice from the

municipality to cease renting the suite. However, the landlord's need to comply with the Act, made it impossible for the landlord to abide by the terms of the tenancy agreement and this resulted in an early termination of the tenancy.

I accept the tenant's testimony that they were forced to endure some inconvenience and expense as a result of having to move out unexpectedly due to the landlord's unauthorized rental of the premises. Therefore, I grant the tenant compensation of \$750.00 for their loss.

Based on the testimony and evidence discussed above, find the tenant is entitled to a monetary order of \$800.00, comprised of \$750.00 in compensation for having to relocate and the \$50.00 cost of the hearing.

In regard to the landlord's claim that \$134.00 is still owed by the tenant for utilities, I find that am not able to make any determination with respect to the respondent's claims because this hearing is only to deal with the tenant's application. No cross application had been filed by the landlord. However, the landlord remains at liberty to make their own claim under a separate application or to pursue an alternate resolution with the tenant if they choose to do so.

In the matter before me, however, I hereby grant the tenant a monetary order in the amount of \$800.00. This order must be served on the landlord and may be enforced in BC Small Claims Court if unpaid.

Conclusion

The tenant is successful in the application and is granted a monetary order for damages including moving costs.

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: April 08, 2014

Residential Tenancy Branch

