



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RR

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, for monetary compensation for loss or damage under the Act, regulations or tenancy agreement and for a rent reduction.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail May 28, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is there a loss or damage to the Tenant and if so how much?
3. Is the Tenant entitled to monetary compensation for loss or damage and if so how much?
4. Is the Tenant entitled to a rent reduction?

Background and Evidence

The Tenant said she moved into the rental unit on January 17, 2014 and was given 2 weeks free rent because the unit was not clean and she said she would clean it. The Landlord said the Tenant received 2 weeks free rent for the inconvenience of pumping repairs that were to commence on February 1, 2014 in the Strata. The Tenant said the tenancy agreement was changed from \$1,400.00 per month to \$1,100.00 per month because the Ministry would not accept the initial tenancy agreement. The Landlord said the tenancy agreement was for \$1,400.00 per month and he did not have any discussions about changing the tenancy agreement with the Tenant. Both agreements were in evidence the tenancy agreement for \$1,100.00 per month is not signed by either the Tenant or the Landlord but does have the initials WB on the line for the Landlord to sign. The Tenant said this is the Landlord’s girl friend and she made the agreement to change the tenancy agreement. The Tenancy agreement for \$1,400.00 per month has

both the Tenant and the Landlord's signatures on it. The Landlord said the Tenant paid a security deposit of \$700.00 on January 15, 2014. The Tenant said the Ministry paid a \$550.00 security deposit for her after the tenancy started. Both tenancy agreements are for a fixed term ending January 31, 2015.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated May 15, 2015. He served the Notice on May 15, 2014, by personal delivery to the Tenant. The Effective Vacancy date on the Notice is May 25, 2014. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful. The 10 Day Notice to end Tenancy is for \$4,200.00 in unpaid rent.

The Landlord continued to say that the Tenant has unpaid rent of \$1,400.00 of unpaid rent for March, April, May and now June, 2014 for a total owing of \$5,600.00.

The Tenant said they were unable to live in the rental unit from February 17, 2014 to March 8, 2014 as the Strata was repairing the plumbing and they were requested to move out of the rental unit. The Tenant said they did move out of the rental unit and during that time they went to Calgary for her son to have an operation and to give time to the Strata to complete the work. The Tenant said she has monetary claims for hotel expenses of \$1,628.27, out of pocket expenses of \$1,448.66 and cleaning expenses to clean the unit when they returned home of \$840.00. The Tenant said she has included paid receipts and photographs to support her claims. The Tenant said her total monetary claim is \$3,916.93.

The Tenant continued to say that because she felt the Landlord owed her these amounts the Landlord would credit these amounts to the rent she owed. The Tenant agreed that she did not pay any rent from March, 2014 to June, 2014. The Tenant said that she provided some emails that indicate that the Landlord agreed to compensate her for not living in the unit from February 17, to March 8, 2014. The Landlord said that was never discussed and he never talked about crediting compensation to the Tenant's rent. The Landlord said the Tenant has not paid any rent for 4 months.

The Landlord continued to say he did discuss some compensation for the Tenant's inconvenience, but the Tenant did not give him any paid receipts and he did not think he should pay for the Tenant's trip to Calgary. The Landlord said they talked about 3 day's compensation for the time the workers were in the Tenant's rental unit. The Landlord said the workers were in the unit for 10 days. The Tenant said the workers were in the unit from February 17 to March 8, 2014, which is 17 days.

Both parties said that communications had broken down between them and both felt that the other party was not returning calls and/or texts.

The Tenant said in closing that she feels that she has been deceived by the Landlord and the Strata and as a result she has incurred many expenses that she cannot afford. The Tenant said she has not paid the rent but she thought the Landlord was crediting

her expenses toward her rent payments and if he did then she would not owe any rent to the Landlord.

The Landlord said in closing that the Tenant has unpaid rent which she has agreed to and he wants to end the tenancy for the reason of unpaid rent. The Landlord has not made an application to date so he said he may make an application for monetary compensation and for the Tenant's security deposit for unpaid rent in the future.

Analysis

Section 26(1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due. Both parties agree the Tenant has unpaid rent therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated May 15, 2014 stands in effect and consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect two days after service of it on the Tenant.

Further I accept from both the Landlord and the Tenant's testimony and evidence that the Tenant has \$5,600.00 in unpaid rent.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

As both parties agree the Tenant had to move out of the rental unit to complete plumbing repairs; I accept the Tenant has established some grounds for compensation due to loss of facilities and service as a result of the time that the Tenant was not able to live in the rental unit. I accept the Tenant's testimony that the workers were in the unit from February 17, 2014 to March 8, 2014. Further there was no evidence that proves the reason for the 2 week free rent at the start of the tenancy therefore I find it is unclear and I dismiss the 2 week free rental agreement from the discussion of the compensation for the plumbing repairs. I find that the Tenant has lost facilities and services for 17 days at a daily rent of \$46.66 (\$1,400.00 / 30 days per month) for a total loss of 17 days X \$46.66 = \$793.33. I award this amount to the Tenant.

Further I accept the photographs and testimony that the unit was in dirty condition after the repairs were completed and I award some compensation to the Tenant for cleaning. Section 7.2 of the Act says a applicant must do whatever is possible to minimize the loss; therefore I find the invoice the Tenant submitted for \$840.00 to be excessive to clean a 900 square foot unit; therefore I award \$300.00 to the Tenant for cleaning costs.

As for the hotel costs and the out of pocket expenses the Tenant submitted for the Tenant's trip to Calgary while the rental unit was being repaired I accept the Landlord's testimony that he should not pay for the Tenant's trip to Calgary. Again section 7.2 of the Act says an applicant must do whatever is possible to minimize the loss. Going to Calgary for the time the rental unit was being repaired is not minimizing the loss. I dismiss the Tenant's claims of \$1,628.27 for hotel costs and the Tenant claim for out of pocket expenses of \$1,448.66 without leave to reapply.

The Tenant has been awarded \$793.33 for lost facilities and services and \$300.00 for cleaning costs for a total of \$1,093.33. I order the Landlord to apply this amount of monetary compensation owed to the Tenant against unpaid rent. The amount of unpaid rent is \$5,600.00 - \$1,093.33 = \$4,506.67. The Landlord is at leave to apply for this unpaid rent if he chooses to within two years after the tenancy ends.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective two days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: June 09, 2014

Residential Tenancy Branch

