



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

The landlord applies for a monetary award for unpaid rent, loss of rental income and damages for cleaning and repair to the premises.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a two bedroom basement suite. The tenancy started in August 2013 for a fixed term ending July 31, 2014, at a monthly rent of \$930.00. The landlord holds a \$465.00 security deposit.

There is an adjoining basement suite in the building and a third rental unit on the main floor above. The tenancy agreement requires that the tenant(s) pay one third of the Hydro and gas utility bills for the building. The parties agree that this ratio was changed to one quarter early on in the tenancy.

The original written tenancy agreement shows a second tenant; a Ms. K. N., however, she apparently left after a few months. Ms. K.N. was replaced by a Ms. H. M., whom the tenant located through advertising on Craigslist. Ms. H.M.'s name was added to the original tenancy agreement and she signed that document. Ms. H.M. apparently moved out within a few days and a third "co-tenant" a Mr. E. R. was located through Craigslist by the tenant and was also added to and signed the original tenancy agreement. He left awhile later and, in or about mid-April, the tenant's older sister, Ms. M.S., moved in. She did not sign the tenancy agreement.

In May there was a dispute between the landlord and tenant about whether or not the tenant had paid her \$34.51 portion of a Fortis gas bill.

On May 22 there was an extraordinary altercation at the premises between the landlord, her husband the witness Mr. C. and the tenant's sister Ms. M.S. On May 27th the tenant wrote the landlord listing her complaints about finding someone suitable to share the cost of the rental unit, a problem with the dryer, a problem with the gutters, the landlord's harassing text messages and visits, a recent dispute about payment of the gas bill and the fact that her sister has decided to leave because "she does not feel comfortable living here with you as landlords." She informed the landlord she would be leaving by June 1st.

The tenant and her sister vacated on or about June 1st. The landlord attended on that day and took photos, as did the tenant. The parties arranged for and attended a move-out inspection for June 14th. A report was prepared but they disagreed that it was an accurate report on the condition of the premises.

The post dated rent cheque the landlord held for the June rent was dishonoured. The landlord says that starting May 28th she advertised on the usual sites: Craigslist and Kijiji and at UBC and SFU but was unable to locate a new tenant until August 1.

The tenant adduces copies of emails to and from a friend named "MarKus" who contacted the landlord on June 12 pretending to want to rent the premises. The tenant claims the landlord did not follow up by responding to MarKus' second email.

The tenant does not dispute outstanding utility bills totalling \$89.17, but says she paid the \$34.51 gas bill (now \$35.03 with interest) by cash placed in a locked mailbox kept by the landlord in the rear of the house. The landlord denies it.

Analysis

The first question is whether or not the tenant was entitled to repudiate the tenancy agreement on June 1st, despite the fact that it was an agreement for a fixed term ending July 31st, 2014.

I have considered the tenant's evidence and particularly the testimony intended to support the reasons given in her letter of May 27th. I conclude the tenant did not have cause to repudiate the agreement.

Whether or not she could find a co-tenant or roommate to take the place of her original co-tenant was a matter for the tenants and was not a responsibility of the landlord.

If the landlord was failing to maintain a service like the clothes dryer or the gutters, the tenant's remedy would normally have been for damages for loss suffered as a result of the landlord's breach of the tenancy agreement or her obligations under the *Residential Tenancy Act* or perhaps a repair order. There was no breach even approaching a severity enough to be termed a fundamental breach or material breach or breach of a material term, justifying the ending of a tenancy.

The landlord, her husband Mr. C. and the tenant's sister Ms. M.S. gave evidence about the altercation on May 22nd and which, I assume, led to Ms. M.S.'s view that she did not feel comfortable living there. It appears to have been the first and only meeting between the three. The tenant's sister complains that Mr. C. was shouting and banging on the door while she was preparing her dinner that night. The tenant was elsewhere. Ms. M.S. did not hear him at first because she was wearing earphones. She indicates he was rude and loud when she opened the door. I give little credence to the suggestion that the landlord or her husband were making the tenant's sister feel uncomfortable. When she opened the door and engaged Mr. C. and the landlord, Ms. M.S. was wearing nothing but a pair of panties. She ended their conversation that evening by telling them to "eat sh** and die." These are not the actions of a person being made to feel uncomfortable.

I have reviewed the text messages referred to by the tenant and do not agree they are "harassing" in any sense justifying ending the tenancy. Similarly, the dispute over payment of the utility bill is far from so serious a matter as to justify termination of a tenancy by a tenant.

A landlord faced with a tenant proposing to end a fixed term tenancy early must make it clear to the tenant when she intends to accept that repudiation but hold the tenant responsible for ongoing lost rent (see Residential Tenancy Policy Guideline 3, "Claims for Rent and Damages for Loss of Rent"). The landlord did so in this case by serving the tenant with this application on May 28, 2014.

The tenant repudiated the tenancy without just cause and is liable for the remainder of rent during the term; the months of June and July. The landlord was responsible for attempting to mitigate her loss by attempting to re-rent the premises for the remainder of the term on similar conditions. I find that she did so by immediately attempting to locate new tenants. I give little weight to the suggestion that her failure to reply to MarKus' second email was proof of a failure to mitigate. The landlord responded to his first email

and denies receiving the second. I doubt that she would have advertised for new tenants and responded to the first email from MarKus if her intention was otherwise than to locate replacement tenant as soon as possible.

I find the tenant is liable to the landlord for the June and July rents totalling \$1860.00. Additionally, as the June rent became due on June 1, the landlord was entitled to present for payment the tenant's post dated cheque for that rent. The cheque was dishonoured and so the landlord is entitled to recover the \$40.00 charge permitted by the tenancy agreement.

The law provides that the burden is on a debtor to prove payment to a creditor. In this relationship it is the obligation of the tenant to prove the alleged cash payment of the March/April gas bill. She has not done so in this case and I award the landlord the claimed \$35.03 for that utility.

The landlord claims \$100.00 for cleaning the premises after the tenant left. It is not uncommon for a landlord who is keen to show and re-rent a premises and a tenant keen to move out and start in a new home to have markedly different opinions about the level of cleanliness the premises should be left in. That is the case here. The *Residential Tenancy Act*, s. 37, requires a tenant to leave the premises "reasonably clean, and undamaged except for reasonable wear and tear." The landlord has presented photographic evidence of some very minor debris; some of it in places a tenant is not required to clean, like under a washer and dryer or under a stove that is not easily moveable. The tenant has presented photographic evidence that satisfies me she left the premises reasonably clean. I therefore dismiss the landlord's claim for cleaning.

The landlord seeks to recover the \$50.00 cost of repair of some laminate flooring in one of the bedrooms. I have looked closely at the photos of the damage and conclude that the portion of the laminate flooring in question has likely slid about 1.5 cm from its original position, snug up against its adjoining sheet. I consider the cause to most likely be an installation defect and not the tenant's fault. I dismiss this item of the claim.

The landlord claims that ten screws are missing from various door hinges. I am not persuaded this condition developed during this tenancy. It is not the sort of thing that would be apparent on a move-in inspection. The landlord also claims for some chipped paint and scuffs. I consider this to be reasonable wear and tear and not the responsibility of the tenant. I dismiss these items of the claim.

A floor tile has been cracked. I consider that had it occurred before this tenancy it would have been observed and remarked upon in the move-in condition report. I allow the landlord's \$13.43 claim for grout to repair it.

I allow the \$2.45 claim for light bulb replacement.

In result, the landlord is entitled to a monetary award totalling \$2040.08 plus the \$50.00 filing fee. I authorize the landlord to retain the \$465.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$1625.08.

Conclusion

The landlord's claim is allowed in part. I grant a monetary order of \$1625.08.

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: September 16, 2014

Residential Tenancy Branch

