



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNSD, MNDC, FF
Tenant: MNDC, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing. Since the landlord's application was filed the tenant has moved out of the rental unit and the tenancy has ended; the landlord's application for an order for possession is no longer required and is therefore dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damage to the rental unit and if so, in what amount?

Is the tenant entitled to a monetary award and to the return of her security deposit?

Background and Evidence

The rental unit is a ground floor suite in the landlord's house in Vancouver. I was not provided with a copy of a tenancy agreement. The tenancy started in September, 2012. The monthly rent was \$950.00 and the tenant paid a \$475.00 security deposit at the start of the tenancy.

The landlord claimed that the tenant moved out of the rental unit on June 30th without giving notice and without paying rent for June. The landlord claimed the following amounts:

- June rent: \$950.00
- Cost for repairs and cleaning as per invoice \$1,650.00

- Cost to rekey front entrance (key not returned) \$20.00
- Repair crack in stove \$100.00

The invoice submitted by the landlord included the following items:

- | | |
|---|----------|
| 1. Fixed hole in the wall and painted all the walls | \$800.00 |
| 2. Fixed hole in the door and painted all the door | \$200.00 |
| 3. Changed island countertop | \$350.00 |
| 4. Cleaned outside barbeque area | \$100.00 |
| 5. Cleaned kitchen stove and floor | \$200.00 |

Total: \$1650.00

The landlord submitted some photographs that she testified showed the dirty condition of the rental unit and the damage caused by the tenant. The landlord did not provide a move in condition inspection report and there was no move out inspection performed.

The tenant testified that she complained to the landlord on May 27th about a water leak in the rental unit. She said that the landlord refused to do anything about the leak. The tenant submitted photographs that she said showed effects of the water leak, including bubbling and sagging paint on the walls caused by water leaking between the paint and the drywall. She said that the dark stains in the photographs were caused by mould that formed on the water soaked walls. The tenant said that she contacted the City after the landlord refused to take steps to repair the problem. A City inspector attended on June 5th. The tenant testified that the inspector told her that the rental unit was an illegal suite and she would have to move out because the landlord had created the rental unit and performed renovations to the rental property without permission or permits from the City.

The tenant referred to a letter from the City of Vancouver to the landlord dated July 8, 2014. The tenant obtained a copy of the letter and submitted it as evidence in support of her application. In the letter the City inspector noted that the house was approved for use as a one family dwelling with a summer kitchen on the lower floor, but the lower floor was being used as a separate dwelling without approval. It was further noted that modifications and additions had been constructed without permits or approvals, contrary to the City By-laws. The City ordered that the landlord cease use of the lower floor dwelling unit and ensure that it is vacant before removing entrances and restoring windows and before applying for permits for approval of unauthorized alterations or by restoring the property to its last approved condition.

The tenant said that when the inspector attended he told the tenant that the landlord did not have to repair the water damaged walls but that she, the tenant, would have to move out because the rental unit was an illegal suite and the City would soon be sending a letter ordering the landlord to cease using the suite as a rental unit. The tenant said that she was claiming the sum of \$2,100.00 which amounted to two month's rent as compensation, plus the sum of \$200.00 as the cost to rent a moving truck. She said that she should be entitled to compensation because she was forced to move as result of the landlord's action in renting an illegal suite. The tenant did not provide any receipts or invoices in support of her claim. She testified that she moved out on June 30, 2014.

The landlord testified that she called a plumber in response to the tenant's reports. She said the plumber did not see any leaks that needed to be repaired. The landlord did not make arrangements to repair the water damage before the tenant moved out.

The tenant denied damaging the rental unit, apart from a hole in the wall behind the bathroom door. She said that she did not clean well when she moved, but she said that there was existing damage when she moved in and she denied that she damaged the countertop or stove as claimed by the landlord.

Analysis and conclusion

I accept the tenant's testimony that she called the City inspector when the landlord did not take steps to repair the water damage after she reported it. I accept as well that the City inspector told the tenant that the rental unit was an illegal suite and that she would have to move out.

The tenant claimed compensation for having to move out of the rental unit; she claimed the equivalent of two months' rent plus \$200.00 for moving expenses. I find that the tenant is entitled to a sum in compensation for the landlord's failure to provide a rental unit that the tenant could occupy. The tenant did not pay rent for June, although she occupied the unit for the full month. Although the landlord could have ended the tenancy by giving the tenant a one month Notice to End Tenancy so as to comply with an order of the municipal government, she would still be in breach of her obligation to the tenant to provide accommodation that complied with the health, safety and housing standard required by law and that was suitable for occupation by the tenant.

I find that the tenant is entitled to compensation for the landlord's failure to provide suitable accommodation that could be lawfully occupied by the tenant. I award the tenant compensation in the amount of \$950.00, being the equivalent of one month's rent. The tenant has not provided evidence that she incurred any costs for a moving

truck and this claim is dismissed without leave to reapply. The tenant is entitled to recover the \$50.00 filing fee for her application, for a total award of \$1,000.00

I find that the landlord is entitled to a monetary award for unpaid rent for the month of June in the amount of \$950.00, however, this award will be set off against the award in favour of the tenant in the same amount.

With respect to the landlord's claim for the cost of cleaning and repairs, the landlord did not submit any form of condition inspection report. Apart from a hole that the tenant acknowledged causing, and the need for some cleaning, the tenant denied the landlord's claims. It is clear from the City's letter that the landlord will need to perform extensive alterations to the rental unit to comply with the orders of the City. I find that the landlord is entitled to a modest amount of compensation for cleaning, for the repair of a hole and rekeying the locks, but not to any amounts for painting, for other wall or door repairs or for replacing the countertop. The tenant disputed the claim for repairing the cracked stove and in the absence of a move-in condition inspection report, I deny this claim. I find that the landlord is entitled to a monetary award of \$220.00 for the cost of the cleaning, repairs and key replacement as mentioned. I have awarded the landlord unpaid rent for June in the amount of \$950.00. The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$1,220.00. Against the award to the landlord I set off the award in favour of the tenant in the amount of \$1,000.00, leaving a net amount due to the landlord of \$220.00. I order that the landlord retain the sum of \$220.00 from the security deposit that she holds and I grant the tenant a monetary award for the balance of her deposit in the amount of \$255.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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 15, 2014

Residential Tenancy Branch

