



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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Introduction

This hearing convened pursuant to monetary applications by the tenant and the landlord. The tenant, a witness for the tenant, the landlord and counsel for the landlord participated in the teleconference hearing.

The hearing first convened on September 18, 2014, and due to time constraints was adjourned to November 17, 2014. On that date, after hearing testimony from all parties, I determined it was appropriate to adjourn the matter for written submissions and final written responses, due December 1, 2014.

The parties were given full opportunity to give testimony, present their evidence, ask questions of the other party and give written submissions. I have reviewed all testimony, evidence and submissions. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Landlord’s Monetary Claim

The landlord indicated in their application that they had incurred costs for repairs in the amount of \$42,750.75 and lost revenue of \$15,300, but they were limiting their claim to \$25,000. During the hearing the landlord agreed to pursue their claim of \$25,000 only in relation to repairs, and I therefore did not hear or consider any evidence regarding lost revenue.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The landlord is a non-profit society that provides housing for foster families. The tenant is a foster parent with foster children in her care. The rental unit is a house in a "village," and the landlord provides some support services for the foster children in the village.

The tenancy began on October 1, 2009 as a fixed-term tenancy to end on September 30, 2010. After that date, the tenancy reverted to a month-to-month tenancy. The parties did not conduct a move-in inspection or complete a condition inspection report at the outset of the tenancy.

On April 19, 2013 the landlord and the tenant signed a new tenancy agreement for a fixed term commencing February 2, 2013 and ending on July 31, 2013. This tenancy agreement indicated that at the end of the fixed term the tenancy would revert to a month-to-month tenancy.

On August 21, 2013 the landlord sent the tenant a letter to notify the tenant that her tenancy had ended on July 31, 2013 and the landlord would not be renewing the lease. The landlord gave the tenant notice to vacate the rental unit by October 31, 2013.

On August 29, 2013 the tenant and the landlord signed a document mutually agreeing to end the tenancy on September 15, 2013. The tenancy ended on September 15, 2013. The landlord and the tenant did not do a move-out inspection or complete a condition inspection report.

Tenant's Claim

The tenant claimed monetary compensation as follows:

1) Renovation costs

The tenant stated that the landlord told her that they would finish the basement suite in the rental unit, but they did not. The tenant stated that she asked for and received the landlord's permission to do the basement renovations at her own cost. The tenant stated that she incurred these costs with the understanding that she would be living in the unit long term and would eventually reap the benefits from having older foster children who could live in the suite.

The tenant stated that she also received permission to replace laminate flooring, at her own cost, with the understanding that she would be living in the unit long term.

The tenant stated that she incurred additional costs for removing construction garbage.

The tenant stated that the landlord illegally terminated the tenancy early. The tenant stated that the landlord gave the tenant an eviction notice even though the tenancy was month-to-month, and then the landlord forced the tenant to sign the mutual agreement to end tenancy. The tenant submitted that therefore the landlord should pay for the renovation costs that the tenant incurred.

2) Alarm installation

The tenant stated that the rental unit was robbed before she even moved in, and was broken into again two weeks after they moved in, while she and the children were sleeping in their beds. The tenant stated that she therefore had an alarm system installed.

3) Costs associated with moving

As noted above, the tenant stated that she was forced to sign the mutual agreement to end tenancy. The tenant has therefore claimed the costs she incurred for utilities hook-up fees; compensation for her time for packing before the move; and compensation for the difference in rent for one year.

4) Loss of quiet enjoyment

The tenant stated that her peaceful enjoyment of the rental unit was violated when the landlord's agent twice entered the rental unit without permission; as well as when the landlord's clients parked their vehicles behind hers, had picnics in her backyard, made out on the table and used the tenant's facilities as a park so that she could not let her foster children outside for safety reasons.

5) Aggravated damages

The tenant stated that the landlord sent a letter to the tenant outlining the reasons why she was an undesirable tenant, and they forwarded that letter to the organization that funds the landlord as well as employs the tenant. The tenant stated that the allegations in the letter were false and the landlord violated the tenant's privacy as well as potentially jeopardized the tenant's job.

The landlord's response to the tenant's claim was as follows.

The landlord stated that the tenant had no right to make unauthorized renovations to the rental unit; further, there was no agreement that the landlord would pay for the renovations or that the tenancy would be long-term. The landlord submitted that the renovations that the tenant had done were of poor quality and required the landlord to have further work done after the tenancy ended. The landlord did not agree to pay for the alarm system that the tenant installed.

The landlord stated that the tenant signed the mutual agreement to end tenancy of her own volition, and as indicated in their letter, they were willing to allow her to stay until October 31, 2013. Additionally, the landlord returned the tenant's security deposit and topped it up; paid for her moving costs; and allowed the tenant to delay payment of outstanding back rent. The tenant therefore is not entitled to any costs associated with her move.

The landlord acknowledged entering the rental unit without the tenant's permission; however, he was doing so to check on the person he hired to do the floors and introduce that person to a new employee.

The landlord stated that as part of their contract with the organization that funds them, they are required to report some things to that organization. This was the reason why the landlord sent a copy of the letter that explained why they were not willing to renew the tenant's tenancy.

Landlord's Claim

In their application, the landlord indicated that they incurred costs totalling \$42,750.75 to repair the rental unit after the tenant vacated. The landlord stated that when the tenant vacated the unit, it was "in horrible condition." The landlord stated that the unit "reeked of animal urine"; many areas of the unit were damaged or dirty; several items such as blinds and door and bath hardware were missing; and the unfinished renovations needed to be completed in order for the premises.

The landlord acknowledged that they lost the photographs that showed the damage done by the tenant. The landlord stated that while there may have been a move-in inspection done, they did not have a copy of a condition inspection report because some of their files were removed by a former employee. The landlord stated that the tenant refused to do a move-out inspection and the landlord did not serve the tenant with a notice of final opportunity to schedule a move-out inspection because they thought they would be covering the costs themselves as a charity, they were just trying to move forward, and they believed based on verbal discussions with the tenant that this was going to be the end of everything. The landlord stated that the house was built and brand-new in 2005. The landlord submitted that they tried to mitigate their costs through an insurance claim, but the claim was refused because the insurance company determined that the damage occurred over a five-year term and all damage was as a direct result of the tenants' usage.

The landlord waived its claim beyond \$25,000 in order to have this matter heard by the Residential Tenancy Branch.

The tenant's response to the landlord's claim was as follows.

The tenant stated that the reason the landlord did not have a copy of a move-in condition inspection report because no move-in inspection was done. The tenant stated that she did not refuse to do a move-out inspection. The tenant submitted that if the landlord had concerns about the condition of the house, it did not make sense that he returned the tenant's security deposit. In regard to the insurance company's letter, the tenant pointed out that she only occupied the house for three and a half years, not five. The tenant stated that she had to do renovations because the house was in such poor condition when she moved in.

Analysis

Tenant's Claim

I find that the tenant is not entitled to any portion of her monetary claim.

The tenant had no written agreement that the landlord would pay for the costs of any of the renovations, on any condition. In fact, the landlord clearly informed the tenant that the renovations they approved were done at the tenant's cost. While the tenant may have hoped to eventually recoup the costs through sponsoring foster children in a long-term tenancy, the landlord gave no such guarantee. Ultimately, the tenant agreed to mutually end the tenancy, and for that reason she was unable to benefit from the renovations.

I do not accept the tenant's submission that she was "forced" to sign the mutual agreement to end tenancy. The tenancy had reverted to a month-to-month tenancy after the second fixed term ended, and the landlord had no authority to end the tenancy on the basis that the fixed term had ended; however, the tenant could have applied for dispute resolution for an order that the landlord comply with the tenancy agreement. Instead, the tenant signed a mutual agreement to end the tenancy.

As the tenant ended the tenancy of her own volition, she is not entitled to costs associated with moving. In fact, the landlord already paid the tenant's moving costs.

The tenant did not provide sufficient evidence to establish any loss of quiet enjoyment of her tenancy. The person whom the landlord hired to do flooring was an agent of the landlord, and that person was already present in the unit when the landlord entered the rental unit to check on the work and introduce another employee. The landlord therefore did not require permission to enter the unit, as one of their agents was already in the unit, with the tenant's knowledge and consent. The tenant did not provide sufficient evidence to show that she lost quiet enjoyment because others were parking behind her vehicle or interfering with her use of the rental property, or that she took reasonable steps to inform the landlord of the issues and require that they rectify the problems.

The tenant did not establish that she suffered any negative impact as a result of the letter that the landlord sent to the organization that employs the tenant. The tenant is therefore not entitled to aggravated damages.

Landlord's Claim

The landlord is not entitled to any portion of their monetary claim. The landlord failed to identify what specific costs were to be covered in their claim for \$25,000. Instead, they only indicated that the total cost of the renovations was \$42,750.75. The landlord did not have a move-in condition inspection report to establish the condition of the unit at the beginning of the tenancy,

and the landlord therefore could not prove that damage to the unit was caused by this tenant. The insurance company's opinion was that damage had been caused over a five-year period, while the tenant only occupied the unit for three and a half years.

While the tenant and her pets may have caused damage to the unit, the landlord did not provide sufficient evidence to distinguish damage done by the tenant and pre-existing damage; moreover, the landlord did not provide a breakdown of the costs for labour or supplies for individual work or items.

Conclusion

The applications of the landlord and the tenant are dismissed in their entirety.

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: December 17, 2014

Residential Tenancy Branch

