Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC FF

Introduction:

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

a) A monetary order pursuant to Sections 7 and 67 for compensation for losses suffered due to the landlord not having the unit ready for occupancy as promised; and

c) An order to recover the filing fee pursuant to Section 72.

SERVICE

Both parties attended and the landlord confirmed receipt of the tenant's Application for Dispute Resolution. I find that the documents were served according to section 89 of the Act.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that she is entitled to compensation as claimed? Is she entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The tenant said the landlord promised her on December 2, 2014 that she could move into the unit on December 30, 2014 with the tenancy agreement to commence on January 1, 2015. She paid $550 for the security deposit and the move-in fee. Rent was to be $1100 payable on the first of each month. On December 30, 2014, she arrived from the ferry about 5 p.m. with the moving truck and met the manager. When she entered the unit, she said she was shocked at the strong smell of curry, the doors were falling off the cupboards and the storage locker was full of items. She said the smell was the most important problem. Her witness confirmed this. The manager said she had not seen the unit until she viewed it with the tenant as the previous tenancy did not end until December 31, 2014. She was reluctant to allow the tenant to rent the unit, sight unseen, and was unsure if the previous tenants would move out by December 30, 2014 but this prospective tenant was very pressing about having to get in on December 30 so she said it would be okay, provided the other tenants moved in

time. The assistant manager confirmed that this prospective tenant was pressing to occupy it by December 30, 2014 because of the holiday period and her plans; she knew she was renting it sight unseen. The manager said when they viewed it together on December 30, 2014, the unit was clean but there was a strong smell of curry, there were loose hinges on one cupboard door and the microwave had a broken handle but was still useable. The cleaner was still there when the tenant and manager arrived and she said there was one cupboard with a stain and a strong smell of curry. She told the tenant she would get the unit ready for the following day and allowed the tenant to park the rented truck in the parking area overnight.

The landlord had the cupboard painted with paint that states it kills odours and stains and fixed the cupboard and the storage locker was cleaned out that evening by 7 p.m. However, the tenant's truck was gone next morning. The tenant and her friend said the strong smell was still present and they did not want to put items in the unit for the smell would permeate clothes and furniture so they arranged to put the tenant's goods in a storage locker as this was cheaper than paying truck rental for another day. The manager called a service company and received advice on getting rid of the smell. She suggested to the tenant the remedy proposed of opening windows, using vinegar and cinnamon but the tenant did not agree. The tenant wanted an ozone machine and the landlord agreed to rent this at a cost of about $350; it was put in the unit for a day. The unit was acceptable on January 2, 2015 but the tenant did not move in until January 3, 2015 as her friends were not available until then. The landlord prorated the rent to January 4, 2015 so the tenant paid $993.45 for January rent, rather than the normal monthly rent of $1100.

The tenant claims as follows:
$96.53: truck rental to move from storage locker to unit
$20: gasoline for truck
$11.14 for lock for locker
$20.32 for lightbulbs for unit as bulbs burned out; the landlord does not disagree with this charge and said they would have replaced the bulbs if time.
$17.02 paid for additional miles on truck to go to storage locker
$12.30 for additional gas for truck
$100.80: for truck charges to go to accommodation in Vancouver (estimate only as went with friends and stayed with friends when unable to stay in unit)
$480: estimate for two movers to move goods from locker to unit: friends did it.
$150: accommodation for 3 nights: estimate for stayed with friends but took them out for dinner etc. in return.

The landlord and her witnesses said that the tenant could have mitigated her expenses by moving her items into the unit and storage locker although she might have wanted to wait a day to move in herself to allow the curry smell to dissipate. They said that after viewing the unit on December 30, 2014, they gave the tenant the option of cancelling the contract but the tenant was still eager to rent it and paid for the first month's rent. They had others wanting to rent the unit. The tenant said she was a long distance from home and felt she had no options; she moved for work and needed a place to live.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order:

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find as fact that there was a tenancy agreement to commence on January 1, 2015 but the manager promised the tenant that she could move in early for the occupying tenants had said they were leaving by December 30, 2014. I find the tenant had not agreed to pay extra rent for these nights but the landlord was trying to accommodate her schedule. I find that the landlord did not violate the Act, regulations or tenancy agreement by not having the unit ready on December 30, 2014 as the tenancy agreement did not commence until January 1, 2015. The fact that the landlord could not have the unit ready on December 30, 2014 was through no fault of the landlord as the previous tenant's lease did not expire until December 31, 2014. I find the weight of the evidence is that by January 1, 2015, the landlord had fixed the cupboard, cleared the storage locker and had the cupboard painted with an odour destroying paint. Although the tenant wanted the further step of having an ozone machine placed in the unit, I find insufficient evidence that this was necessary to have the unit habitable. I find the weight of the evidence is that on January 1, 2015, the unit was fit for occupancy

Since I find the landlord did not violate the Act, regulations or tenancy agreement, I find any damages or loss suffered by the tenant were not the result of any act or neglect of the landlord. I find the tenant was also compensated as the landlord prorated the rent to January 4, 2015 so the tenant was compensated for the *rental* days she did not spend in the unit.

Moreover, I find the tenant did not take reasonable steps to minimize her loss by putting her goods in the unit and storage locker even if she chose not to sleep there herself. I find insufficient evidence that this smell would cause damage to furniture or clothes; I find the landlord's evidence credible that by January 1, 2015, the smell had gone but they placed an ozone machine in the unit to satisfy the tenant.

The landlord has agreed that the tenant should be reimbursed for lightbulbs she bought as according to Residential Policy Guideline 1, it is the responsibility of the landlord to provide lightbulbs at the beginning of a tenancy. The landlord would have been willing to reimburse her if requested. I find the tenant entitled to reimbursement of $20.32 as invoiced. I dismiss all other claims of the tenant.

Conclusion:

I find the tenant entitled to reimbursement of $20.32. **I HEREBY ORDER that the tenant may recover this amount by deducting $20.32 from her next rental payment.** I dismiss all other claims of the tenant in their entirety. I find the tenant not entitled to recover filing fees for this application as she was mostly unsuccessful.

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: May 06, 2015

Residential Tenancy Branch