



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This was a hearing with respect to the tenant's application for a monetary award. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a basement suite in a Vancouver house. The tenant moved into the rental property in May, 2011. Initially she sublet a unit in the rental property from the head tenant who had rented the entire house from the owner of the property. The tenant entered into a new tenancy agreement with the owner as landlord on November 1, 2011. The tenancy began on November 1, 2011 for a one year term ending October 31, 2012. The tenancy agreement provided that the tenancy would end on October 31, 2012 and that the tenant must move out of the rental unit by that date. The monthly rent was \$1,400.00 and the tenant was credited with payment of a \$700.00 security deposit.

The tenancy ended and the tenant moved out of the rental unit shortly after October 31, 2012. The tenant filed this application on October 30, 2014, seeking a monetary award from the landlord in the amount of \$14,278.56. The tenant submitted a written narrative concerning her claims for various sums of money dating back to periods before the commencement of the tenancy in November, 2011. The monetary claims sought by the tenant are itemized as follows:

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|--|----------|
| • Cabinet to hide meter in storage room: | \$300.00 |
| • Inappropriate electricity charges: | \$133.09 |
| • Balance of Appliance costs: | \$181.86 |

• Cost of dishwasher installation:	\$816.00
• YARD CHANGES:	\$878.26
• Labour on front yard renovation:	\$900.00
• Rent refund:	\$2,100.00
• Cleaning up Christies flood:	\$120.00
• Microwave stand:	\$67.19
• Previous tenants received \$200/month discount for the yard work I did Sept 2011- May 2012 8 months	\$1,600.00
• Carport cleaning out:	\$120.00
• Gravel & Gravel installation:	\$400.00
• Ant control daily 10min/day=	\$1,830.00
• Rent refund for February & March chaos:	\$1,400.00
• Concrete closet repair done over a week:	\$300.00
• Floor installation to equal Louise's payment:	\$360.00
• Carpet cleaning invoices:	\$206.64
• Professional move out cleaning:	\$200.00
• Reimbursement of closet shelving:	\$150.00
• Painting, LR, HALLWAY, KITCHEN & BATHROOM	\$1,200.00
• Wall repairs on move out:	\$120.00
• <u>Return flight to/from Florida approximately:</u>	\$800.00
<u>TOTAL</u>	\$14,278.56

The tenant stated that she is pursuing other claims against the landlord in Small Claims Court. The tenant filed a previous application for dispute resolution wherein she claimed similar relief to that sought in the application before me, as well as other relief. At a hearing on September 18, 2013 an arbitrator found that the tenant's claim included matters that were unrelated to her tenancy. The tenant was granted an adjournment to give her an opportunity to refine her claim to remove the unrelated matters; she failed to do so and in a November 18, 2013 decision her claim was dismissed with leave to reapply. There was no discussion in the decision to address whether leave to reapply should have been granted or withheld. The tenant waited more than 11 months before she reapplied to advance the claims in this proceeding. She said she was delayed in reapplying due to ill-health.

The tenant said that she questioned the one year lease provision in the tenancy agreement. The tenant said that the landlord knew that it was her intention to stay in the rental unit on a long-term basis and: "to be included in the tear down and rebuild process."

The tenant addressed her individual claims during the hearing. She claimed \$300.00 as the cost for a cabinet. She said that at the landlord's request she placed the cabinet in

the storage area so as to conceal the electrical meter. When she moved out of the rental unit she left the cabinet behind. The tenant was not prevented from removing the cabinet and she did not say why she did not take the cabinet.

The tenant claimed the sum of \$133.09, said to have been improperly paid for electrical utilities in February and March, 2012.

The tenant claimed payment of \$181.86 said to be payment for the balance of the costs to purchase a stove and refrigerator for the rental unit in March, 2012. The landlord disputed the tenant's claim for reimbursement. He referred to the tenant's documents, including a November 10, 2012 e-mail message from the tenant setting out the amount claimed by her for items, including 3 appliances, a stove, refrigerator and dishwasher, a microwave, some cabinets and the refund of her security deposit. The tenant acknowledged payment of the amount requested, namely: the sum of \$2,498.51.

The tenant claimed for payment for the cost to install a dishwasher. During the tenancy the tenant requested permission to install a dishwasher in the rental unit. The landlord agreed to allow the tenant to install a dishwasher at her own expense. The landlord paid the tenant for the cost of the dishwasher as part of the payment referred to above, but the tenant has now advanced a claim for the cost to install the dishwasher in the amount of \$816.00.

The tenant claimed amounts for changes that she made to the yard at the rental property. The tenant said that when she moved to the rental property in 2011, she had the use of the entire yard. She said that the landlord reapportioned the allotted yard use between tenants. The tenant said that she made changes to move her vegetable garden from the front yard and performed extensive yard renovations, including installing a new lawn. The tenant claimed for the cost to move a gazebo from the back yard to the front yard. She claimed \$1,778.26 for yard work and yard changes.

The tenant claimed \$2,100.00 as a rent refund. She said she was entitled to a refund because the troublesome upstairs tenant paid no rent for six weeks before she moved out pursuant to an eviction notice. The tenant said that she should receive an equal period of free rent.

The tenant claimed that the before moving out in December, 2011, the upstairs tenant caused a flood in her unit. The tenant claimed \$120.00 for her time to clean up the flood and a further \$67.19 for the cost of a damaged microwave stand.

The tenant claimed that the former upstairs tenant was given a \$200.00 per month rent reduction for gardening, but did not do any significant work. The tenant said she was

claiming \$200.00 per month from September 2001 until May, 2012 for yard work and grass cutting for a total of \$1,600.00.

The tenant claimed several amounts related to the carport on the rental property. The tenant said the carport was unused and she received the landlord's permission to use the carport beginning November, 2011. She complained that the landlord asked her to move items from the carport so the upstairs tenants could maneuver their baby stroller past her car. She said the items were not hers and claimed \$120.00 for four hours of her time to move them. The tenant said that the driveway had potholes and became muddy in the rain. The tenant said that she found someone to supply gravel. She said that she hired a truck to bring gravel and paid \$400.00 for the work, but the landlord refused to reimburse her for the expense.

The tenant claimed that there was an ant infestation in the rental unit. She claimed payment of the sum of \$1,830.00, said to be compensation for ant control calculated at 10 minutes per day from September 1, 2011 until October 31, 2012.

The tenant claimed a rent refund of \$1,400.00 for the month of March, 2012. The tenant said that there was a water valve leak in the bathroom that required the removal of some drywall material to get access. The tenant said she had to remove belongings from the closet because the drywall had to be removed from the bathroom and closet walls. The tenant said there was a mould problem and she had to sleep at her daughter's house: "for a few days". The tenant said that the plumbing repair was performed incorrectly and the hot water line was hooked up to the toilet. In her written submission the tenant said she: "lived in constant turmoil for about a month". She claimed a rent refund for March: "as I had to sleep elsewhere for many days during February and March and was unable to have my Grandson stay due to possible repercussions from Mould."

The tenant claimed the sum of \$300.00 said to be for sealing the cement floor in the closet. The tenant said that she placed some linoleum tiles on the closet floor. She complained that the tiles she installed did not match the carpet in the bedroom. The tenant claimed \$17.53 for the cost of a tool she purchased to cut the linoleum. The tenant said that another person was paid \$360.00 by the landlord to install flooring. The tenant claimed that she should be paid the same amount.

The tenant claimed \$206.64 for carpet cleaning. She said that she cleaned the carpets in September, 2012, not knowing that she would have to move out in two months. She claimed that she had to clean them again in November as a move out requirement to get her deposit back. The tenant said she should not have to pay these amounts because she would not have had the carpets cleaned if she knew she was going to have to move.

The tenant claimed \$200.00, said to be the amount she paid to have the rental unit professionally cleaned at the end of the tenancy.

The tenant claimed \$150.00 for closet shelving that she had installed during her tenancy. She said the amount was for the \$43.65 cost of the shelving and the cost to install it.

The tenant said that she painted the rental unit during her tenancy. She said that the painting took more than a week and she claimed \$1,200.00, calculated as 40 hours at \$30.00 per hour. The tenant claimed a further \$120.00 for wallpaper installation. She submitted an invoice for materials in the amount of \$77.99.

The tenant claimed \$800.00 for airfare. She said she was leaving for Florida when she received a phone call from the landlord who told her that her tenancy would end on October 31st, but offering to allow her to stay until the end of January. The tenant said that: "I was planning to be in Florida until the end of January so I opted to come home and move and then go back to Florida rather than pay rent for 3 months when I would not be there. This came as a complete shock to me."

The tenant summed up her claim as follows:

If I had not been lead to believe that I would be living on this property for many years to come I would never have spent a penny of my own money or any of my time making it so nice.

The landlord testified at the hearing and provided a written response to the tenant's claims. The landlord said that his former tenant rented the entire property from the landlord and had then sublet the suites in the rental property to the tenant, among others. After the landlord's head tenant was evicted, the landlord entered into agreements with the tenant and the other existing occupants. The landlord had to remove one of the illegal suites created by his former tenant and reduce the number of rental units from three to two.

The tenant did not pay rent for October, 2011 and the landlord credited the tenant with payment of the \$700.00 security deposit that was not returned by the tenant's former landlord.

The landlord said that when the main floor tenant declined the use of the garage, he offered it to the tenant on the basis that she would then commence to pay for electricity usage. The landlord said that the tenant agreed because she was glad to have covered

storage for her nearly new car. The landlord said that during her one year tenancy she paid \$133.09 for electricity, which works out to \$11.09 per month.

The landlord commented on the tenant's claims for yard work and renovations. He said that after he became the landlord and entered into new tenancy agreements, he had to impose some rules with respect yard usage, because previously there were no rules and it was a chaotic free for all. The landlord referred to e-mails exchanged between the landlord and the tenant regarding the shared space. The landlord submitted that the tenant acknowledged the rules about shared space and that there was no basis for her claims for compensation for yard changes or renovation.

The landlord rejected the tenant's claims for various rent refunds. He acknowledged that there was a plumbing leak in the bathroom, but he denied that the repair took more than a few days to complete or that the tenant was inconvenienced for any protracted period. The landlord said that the fact that another occupant failed to pay rent and was evicted does not entitle the tenant to a rent refund.

The landlord said that he was unwilling to install a dishwasher in the rental unit, but the tenant insisted and he agreed based on her assurance that would pay for the entire cost of installation and for removal as well, "if need be". The landlord noted that he paid the tenant exactly what she requested for appliances pursuant to the final accounting document created by the tenant. The landlord testified that he returned the tenant's security deposit and paid her the amount she requested as a final reconciliation after the tenancy ended. She has brought an earlier proceeding against him that was dismissed, followed by a Small Claims court action and this proceeding started two years after the tenancy ended. The landlord said that the tenant's claims against him constitute harassment and have no merit.

Analysis

Many of the tenant's claims are for reimbursement of money and time spent on improvements to the rental unit and the rental property. The tenant has based her claims upon her expectation that she would have a long term tenancy. The tenant claimed that the landlord gave her verbal assurances that she could expect to have a long term tenancy continuing after October 31, 2012.

The following is a concise statement of the "parole evidence rule", a principle of evidence with specific application to the interpretation of written contracts.

It has long been a substantive rule of law in the English speaking world that in the absence of fraud or mutual mistake, oral statements are not admissible to

modify, vary, explain or contradict the plain terms of a valid written contract between two parties.

It should be noted that there is a very sound basis for the rule for to consider any or every oral statement made by one party or the other during contract negotiations so as to vary, modify, or contradict the plain language finally adopted could throw the best written contract into doubt, and constant turmoil. Where a contract is clear and unambiguous, oral statements or reservations made by either party do not change it.

If terms of the contract are ambiguous or clearly susceptible to more than one meaning then parole evidence is admissible to show what the parties meant at the time of making the contract and how they intended it to apply.

In the present case there is no ambiguity in the written tenancy agreement; it is signed by both parties and it states unequivocally that the tenant must move out at the end of the fixed term. I find that the landlord did not offer the tenant anything beyond the one year fixed term tenancy set out in the agreement that she signed. The agreement required the tenant to move out at the end of the fixed term and the landlord advised the tenant that he would not continue the tenancy, but he did offer her more time to move; up to the end of July, 2013. The tenant declined his offer and moved out shortly after October 31, 2012.

The tenant has claimed for renovations to the yard, for gravel for the driveway and for improvements to the rental unit, including painting, dishwasher installation and for shelving. Save and except for appliances supplied by the tenant, all of the tenant's improvements to the rental unit and to the rental property were carried out without the landlord's agreement that he would pay for them or reimburse the tenant for her expense or time. The claims are without merit and they are dismissed without leave to reapply. The tenant has been reimbursed for the appliances she purchased, including the dishwasher that was approved only on the basis that the tenant would install it at her own expense. The tenant's claims for additional amounts for the appliances and for the dishwasher installation are dismissed without leave to reapply.

The tenant has claimed for a daily charge for dealing with ants. There is no written report of any ant problem during the tenancy and no indication that the landlord failed or refused to treat such a problem; this claim is denied.

The tenant claimed for some cleaning that she had to perform after a water leak and for damage to a microwave stand. This claim, like the others made by the tenant was not advanced when the events are said to have occurred; there is no indication that the tenant made a contemporaneous complaint to the landlord. The tenant did not submit evidence to establish the value of the item said to have been damaged. The damage was not due to the landlord's negligence and I find that the landlord is not liable for her loss, if any. If the tenant had a legitimate claim for compensation it would be a matter to pursue with her insurer under a tenant's insurance policy.

The tenant has claimed for items she left behind at the end of the tenancy, there is no basis for these claims and they are denied.

The tenant has claimed for reimbursement for carpet cleaning and for cleaning. The tenant had no reason to expect the tenancy to continue past October 31, 2012. The cleaning tasks are ordinary expectations at the end of any tenancy and the tenant's claim for a refund of these amounts is denied. Her claim for airfare has no merit and it also is dismissed.

Conclusion

With respect to the whole of the tenant's claim, the delay has been inordinate and prejudicial to the landlord. For the reasons stated above I find that the tenant's claims should be dismissed in their entirety without leave to reapply.

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: July 14, 2015

Residential Tenancy Branch

