



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ajay Boparai Enterprises Ltd. (Inc No. #BC0812685)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The hearing did not conclude on the first day scheduled and was adjourned for a continuation of testimony, cross examination and closing submissions. The landlord company was represented on both hearing dates by an agent who is referred to in this Decision as the landlord, who was also accompanied by legal counsel. The tenant also attended on both scheduled dates. The parties each gave affirmed testimony and the landlord called one witness who also gave affirmed testimony. The parties, or counsel, were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the landlord withdrew the application for an Order of Possession.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2013 and stated that he believes the tenancy ended in June, 2015. Rent in the amount of \$2,000.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No written tenancy agreement was signed by the parties, and no move-in or move-out condition inspection reports were completed.

The landlord further testified that the tenant failed to pay any rent for the months of May or June, 2015 and is currently in arrears the sum of \$4,000.00.

The tenancy was for the upper floor of the house and in November, 2013 the landlord renovated the lower level of the house and rented to other tenants. The tenant was given first opportunity to rent the renovated portion, but the tenant went to Europe and it was rented while she was gone. The tenant was also told that the front and back yards would be shared. For 6 weeks during construction, there as no door between the levels, and construction took place for 5 months.

The tenant was very friendly to the newer tenants in the lower level, but they had a dispute over fixing the tenant's car. The tenant also claimed there was a robbery in the rental unit and she asked the landlord if she could put in a security system. The cost was \$700.00 which was deducted from the rent and the landlord agreed. The tenant had reported the robbery to the police and to the landlord and the landlord told the tenant that the tenants in the lower level would be evicted if the robbery had in fact been done by them. To the best of the landlord's knowledge, no criminal charges have been filed against the tenants in the lower level for robbery or theft.

The landlord claims \$4,000.00 for unpaid rent, recovery of the filing fee, and for an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

The landlord's witness testified that she has been an agent for the landlord, and has not received any rent from the tenant for May or June, 2015.

The witness also testified that in mid-May, 2015 the witness was at the tenant's door with a month-to-month lease to sign. The tenant refused to sign it until the landlord dealt with issues and promises that the landlord had made. During that conversation the witness also told the tenant that the tenants in the lower level were her relatives and had just signed a 1 year lease with the landlord.

The tenant returned the keys to the rental unit to the landlord's witness at the end of the tenancy, and the witness requested to do an inspection so the unit could be advertised to re-rent. The parties also had a conversation about how the landlord made promises to the tenant, and gas had been shut off for awhile.

The tenant testified that the agreement was to rent the whole house for \$2,000.00 per month. The basement was unfinished, and the rent included the front and back yards, orchard, central heating and air conditioning and all utilities. The tenant asked for a lease but the landlord refused and told the tenant to live there as long as she wanted and to stay until her kids are grown.

It took 2 days to remove the previous tenant's stuff and to clean. No move-in condition inspection report was completed, but the tenant did one on her own and had it witnessed by a third party.

In November, 2013 the landlord told the tenant that he decided to put 2 suites in the basement, and the tenant asked for first right to rent them out. The tenant's goal was for her daughter to move in.

The landlord promised that the concrete area in front would remain the tenant's, and the tenant knew the back yard would be lost for the suites. The landlord also promised to secure the suite so that others couldn't access it.

For the first 6 weeks of construction there was nothing to block the noise or tradespeople. Then a door was put on but it had no handle or lock and the hinges were on the downstairs side which left no safety for the tenant. After much requesting of contractors, because the landlord wouldn't answer the tenant's calls, the tenant wanted drywall, and then a handle was put on the door with a lock on the downstairs side, not on the tenant's side. It took another week of requesting before a very small pin-lock with a 1/4" hole was provided.

Construction went till March, 2014 and the tenant had no electricity for 5 days and again the landlord wouldn't return the tenant's calls. By April, 2014 the landlord had assured the tenant that she could rent the lower level and the tenant went to Europe. Upon returning in May, the tenant found new tenants in the lower level, a camper and vehicles in the tenant's parking spots.

In October the tenants on one side moved out and a family of 4 moved in, who made awful noises, pounding and screaming. The tenant told the landlord immediately and again in November and in December. The landlord promised to evict them but that didn't happen.

In December, 2014 the tenant's rental unit was robbed. The suite was locked but the pin-hole lock had been jimmied open. The tenant talked to the other tenants who told her she deserved it because she had kept their mail. Police were called, who said that because the door is not properly secured, it's considered 1 house. The landlord was also notified and the tenant heard him tell the other tenants that they were evicted, but by February 1, 2015 no one had moved out.

The tenant chose to not pay rent for May because the gas and air conditioning were not working, 80% of the tenant's space had been taken away inside and outside as well as parking. The door still wasn't secured properly and the tenants in the lower level still hadn't moved out. None of the landlord's promises had been fulfilled and the landlord would not respond to letters or phone calls. The tenant went to the landlord's home numerous times but received no answers and still had no gas.

In mid-May the landlord's agent told the tenant that she had been asked to take over for the landlord. She had a month-to-month lease with her and the tenant advised that she was not willing to sign it until the parties settled what the landlord had agreed upon. She told the tenant the landlord was no longer available.

On June 1, 2015 the tenant left a note at the landlord's house saying that because of the new lease for the tenants downstairs, she was moving out effective sometime between June 5 and 20.

Analysis

The *Residential Tenancy Act* states that a landlord is required to provide and maintain rental premises in a state of decoration and repair that makes it suitable for occupation by a tenant. The *Act* also states that a tenant must pay the rent even if the landlord fails to comply with the *Act*. The tenant had other options available to her if she was dissatisfied with the lack of attention by the landlord, but none of those options include refusing to pay rent. There is no application before me from the tenant requesting that rent be reduced or for any monetary compensation.

The tenant does not dispute that rent hasn't been paid for May or for June, 2015, and the parties agree that rent was agreed to at \$2,000.00 per month. In the circumstances, I am satisfied that the landlord has established a claim for unpaid rent in the amount of \$4,000.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

The landlord currently holds a security deposit in the amount of \$1,000.00, which I order the landlord keep in partial satisfaction, and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$3,050.00.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,000.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,050.00.

This order is final and binding and may be enforced.

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 31, 2015

Residential Tenancy Branch

