



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy, for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee.

Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing the tenant informed me that she had moved out. Accordingly, the portion of her application to cancel the notice to end tenancy was moot and therefore dismissed. This hearing only dealt with the tenant's claim for a monetary order.

Also at the start of the hearing, the landlord raised the question of jurisdiction. She stated that it was her understanding that this tenancy did not fall under the jurisdiction of the *Residential Tenancy Act*. The landlord described the rental unit as accommodation that was shared by the landlord who is also the owner of the property. The tenant argued that the landlord did not live in the rental property and provided documentary evidence to support her testimony.

The tenant stated that she moved to BC to attend school. The tenant looked on line for accommodation and found the landlord's advertisement for the rental unit. The tenant provided a copy of the advertisement. The advertisement describes the room for rent and states that the other bedroom in the unit is occupied by a student. The ad also states "*I have lived in the room until recently*" The tenant pointed out that the advertisement did not mention that the living room was for the exclusive use of the landlord or that the landlord would be sharing the kitchen.

The landlord stated that the photographs attached to the advertisement do not show the living room and therefore the tenant should have understood that the living room was not available for the tenant's use.

The tenant also stated that she communicated with the landlord by email to make arrangements to move in. The tenant filed a copy of an email dated March 05, 2015, from the landlord which states "*Although we don't live there, we will come to let you in and give you the keys*".

The landlord's explained that she did not spend nights at the rental unit but used the living room to relax with friends. However in a text message dated May 27, 2015, to the tenant, the landlord states "*Besides, in 2 months you were there have we ever come?*"

The landlord stated that prior to signing the lease; she clearly explained to the tenant that the living room was for the sole use of the landlord and that the kitchen facility would be shared by both tenant and landlord. The tenant denied this. The tenant stated that it was only upon her arrival into the rental unit, that the landlord informed her that the living room was for the sole use of the landlord. The tenant stated that the reason given to her by the landlord was that the landlord had listed the unit for sale and wanted it to show well. The landlord agreed that she had listed the unit for sale just prior to the start of tenancy.

A copy of the tenancy agreement was filed into evidence. The agreement does not mention that the landlord will be using the living room and sharing the kitchen.

Based on the above, I find on a balance of probabilities, that the landlord did not inform the tenant in the advertisement or in the tenancy agreement that the accommodation would be shared by the landlord. I further find that the advertisement and the tenancy agreement confirm the tenant's testimony that the landlord did not live in the rental unit and had not clearly explained to the tenant prior to the time that the tenant moved in, that the tenant could not use the living room and would be sharing the kitchen with the landlord. I accept the tenant's testimony that the landlord informed the tenant upon moving into the rental unit, that she should not use the living room because the unit was up for sale and would show better if not in use. In addition the landlord confirmed that the unit was listed for sale just prior to the start of tenancy.

After having considered the testimony of both parties and the documentary evidence, I find that the landlord did not live in the rental house and accordingly this matter falls within the jurisdiction of the *Residential Tenancy Act*.

Issue to be Decided

Is the tenant entitled to compensation?

Background and Evidence

The tenancy began on April 01, 2015 for a fixed term of six months. The monthly rent was \$620.00 payable on the first of each month. The rental unit consists of a bedroom located in a two bedroom apartment. The second bedroom was also rented to another student. Each bedroom had its own bathroom. The kitchen was shared by the two occupants of the house. A copy of the tenancy agreement was filed into evidence.

In her written submission the tenant states that she arrived at the rental unit at 9:00 pm on March 31, 2015. By prior arrangement the landlord met her at the rental unit, showed her around and gave her the keys. The tenant states that at that time the landlord informed her that she was not to use the living room which the landlord stated was the reason a photograph of the living room was not included in the advertisement. The landlord also informed the tenant that the unit was listed for sale and that the realtor would be contacting the tenant to arrange showings.

Both parties agreed that for most of the first two months of tenancy, the landlord did not visit the rental unit. The tenant stated that on or about May 15, 2015 a student AA, moved into the second bedroom. On May 26, 2015, around 3:00 pm, the landlord visited the unit to carry out some maintenance work. The landlord knocked on the door and used her key to unlock the door. The door was secured by a safety chain. The tenant was in her bedroom asleep. The landlord called out for AA who was not home at that time. The tenant stated she heard the call and since it was not for her and since she had had a late night, she put on some head phones and went back to sleep.

The tenant was woken up by AA later that evening. The tenant noticed that she had multiple missed calls, 2 text messages and 2 voice mails on her phone, all from the landlord. The tenant also had a text message from AA saying that someone was banging on the door and she was scared. As AA was relating the events of the day, the landlord entered the unit using her key. The tenants asked the landlord to provide notice prior to coming into the unit and the landlord refused. The next day, the landlord removed the safety chain, so that she could have unrestricted access to the rental unit.

The tenant stated that both bedroom doors did not have locks and with the removal of the safety chain, the tenants did not feel safe. On May 31, the landlord served the tenant with a notice to end tenancy for cause. The effective date of the notice was June 30, 2015. The reason for the notice is that the tenant has seriously jeopardized the health and safety or lawful right or interest of another occupant or the landlord. The tenant disputed the notice in a timely manner.

The landlord stated that the tenant had restricted her from entering the unit and therefore she wanted the tenancy to end. The tenant stated that she did not feel safe inside the rental unit without the safety chain. The tenant describes the area as a location where there have been multiple murders and break and enter incidents and therefore she purchased a safety chain and attempted to install it.

The tenant stated in her written submission that as a safety precaution she and AA would meet prior to entering the rental unit, so that neither one entered alone or was in the home alone. The tenant stated that one evening they arrived home to find the landlord and her spouse inside the unit. The tenant decided to move out as per the effective date of the notice to end tenancy.

Analysis

Based on the testimony of both parties and the documents filed into evidence, I find that the parties were in a relationship of landlord and tenant which comes under the jurisdiction of the *Residential Tenancy Act*.

Section 29(1)(a) of the *Act* authorizes a landlord to enter a rental unit at any time with the permission of the tenant. In this case, I find that the landlord refused to provide notice to the tenant prior to entry. In addition, the landlord removed the safety chain that secured the front door which resulted in the tenant feeling unsafe inside the rental unit.

During the hearing the landlord testified that she served both tenants with notices to end tenancy because she was unable to enter the rental unit due to the presence of the safety chain and because the tenants wanted her to provide them with notice prior to entering the rental unit.

I find that the landlord did not have sufficient reason to end the tenancy. The tenant disputed the notice in a timely manner but was forced to move out due to the landlord's insistence on visiting without notice and the feeling of insecurity inside the rental unit due to the absence of a lock on the bedroom door. I therefore find that the landlord caused the tenant concern and anxiety which rendered the unit unfit and possibly unsafe for occupation, thereby leaving the tenant no option other than to move out.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

The Residential Tenancy Act is also designed in part to address a power imbalance between parties, clearly defining the rights of landlords and tenants and preventing one party from taking advantage of another.

In this case I find that the landlord breached s.29 of the *Residential Tenancy Act* and refused to provide notice prior to entry into the rental unit. The actions of the landlord instilled feelings of insecurity in the tenant thereby rendering the unit unfit for occupation. I find that the tenant felt insecure and unsafe in the apartment due to the actions of the landlord and her refusal to provide notice prior to entering the rental unit. I find that the actions of the landlord resulted in a loss of quiet enjoyment of the rental unit by the tenant. The tenant has applied for compensation in the amount of \$290.00. I find that the tenant is entitled to her claim.

Since the tenant has proven her claim I award the tenant the filing fee of \$50.00.

Overall the tenant has established a claim of \$340.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$340.00**.

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: August 05, 2015

Residential Tenancy Branch

