



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant's application: CNC, MNDC, OLC, RP, LRE, AAT, RR,, O

Landlord's application: OPC, OPB, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted as an in-person hearing at the offices of the Residential Tenancy Branch in Burnaby. The tenant attended with her representative and the landlord attended with his wife. The tenant applied to cancel a one month Notice to End Tenancy and for other relief including an order that the landlord comply with the *Residential Tenancy Act*, make repairs to the rental unit, allow access to the unit and grant the tenant a rent reduction. On August 12, 2105, the tenant amended her application to seek a monetary award in the amount of \$5,000.00. The landlord applied for an order for possession pursuant to a Notice to End Tenancy for cause. The tenant moved out of the rental unit and the tenancy ended shortly before the hearing. Because the tenancy has ended, there is no longer any basis for the applications to cancel the Notice to End Tenancy, or for the claims for a repair order, for an order that the landlord comply, that he allow access and for a rent reduction; these claims and the landlord's claim for an order for possession are dismissed without leave to reapply. The hearing was concerned with the tenant's application for a monetary award.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for cleaning the rental unit on move-in, for loss of quiet enjoyment, for alleged harassment by the landlord and illegal entry to the rental unit?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Burnaby. The tenancy began May 1, 2015 with rent in the amount of \$700.00 payable on the first of each month. The tenant paid a security deposit of \$350.00 at the commencement of the

tenancy. The tenant said that in April she was searching for an apartment and responded to the landlord's advertisement on Craigslist. She testified that she told the landlord that she was not working and receiving disability benefits. The tenant testified that she told the landlord that her son and granddaughter would visit her and her granddaughter would stay with her on weekends. The rental unit was occupied when the tenant attended to inspect it on April 16th. The tenant testified that she found the rental unit suitable and she told the landlord that she wished to rent it. The landlord accepted her as tenant and she signed the tenancy agreement dated April 18, 2015. The tenant said that she asked the landlord when the suite would be available. According to the tenant, the landlord said that she should contact the current tenant to see when she would be moved out. The tenant said that she contacted the former tenant and picked up the keys from her on April 28th. When the landlord called the following day the tenant told him that she already obtained a key and she intended to come to the rental unit to do some preparing and cleaning. The tenant said she suffers from "OCD" (obsessive compulsive disorder) and for this reason was very particular about the cleanliness of the rental unit.

The tenant testified that when she entered the rental unit for the first time after the former tenant moved the suite was very dirty and there was furniture, cast-off belongings and garbage left behind in the rental unit. The tenant submitted photographs of the rental unit and of items left behind. The pictures were taken on May 1, 2015.

The tenant testified that she thoroughly cleaned the unit herself and put the former tenant's belongings outside.

The tenant complained that the landlord almost immediately began to interfere with her quiet enjoyment of the rental unit. She said that on May 3rd just days after she moved in the landlord demanded to know whether the tenant had taken a bath the night before. When she confirmed that she had taken a bath, the landlord told her she was only allowed to use the shower; that no-one in the house uses the bath. The tenant said she needed the bath for her sore back, but said she was forced to comply.

The tenant complained that the landlord gave her a test message and entered the rental unit on May 5th to shut off a water line; she complained that he used the occasion to inspect the rental unit. The tenant testified that on May 7th her granddaughter and nephew were present at the rental unit. They were playing with her moving boxes. She said the landlord knocked on her door and complained about the noise. He said that the children could not do crafts and laugh so much. The tenant claimed that several days later the landlord told her that: "kids are not allowed in my suite". She said that the landlord told her that if she wished to visit her granddaughter to do it in the park, but not

in any circumstances in her suite. She also alleged that the landlord told her she should not have visitors every day.

The tenant claimed that she moved out on May 12, because of the stress caused by the landlord and did not return until May 30th when she paid the rent and resumed occupancy of the rental unit. The tenant complained that the landlord insisted on turning off the hallway light, leaving the entrance to her suite in darkness. She claimed that this caused her to experience panic attacks.

The tenant said that although she only smoked outside the rental unit in a designated area, the landlords continually complained about smoke coming into their portion of the house and patio. She said she moved her smoking area further away from the landlord's balcony to accommodate his complaints.

The tenant testified that in June, when she was using the stove to boil water, the stove began smoking and the kitchen filled with smoke and the smoke alarm went off. The tenant said that the landlord came in, but did not assist and instead went to inspect her bathroom. She said the landlord's wife also came into the rental unit and started yelling at her and accusing her of doing: "illegal stuff". The tenant accused the landlords of bullying her. She said the smoke was caused because the previous tenant had spilled things into the stove and had not cleaned properly. The tenant said it took her several hours and an entire bottle of oven cleaner to clean the stove. She asked the landlord to compensate her for the work and the cleaner.

The tenant said she left the rental unit after cleaning the stove and did not return until June 18th, which was her birthday when members of her family came to visit her. The tenant said that the landlord insisted on conducting an inspection of the rental unit on this day without providing any notice. The tenant said that the landlord served her with an eviction notice on June 27th. He knocked on the door and handed the notice to her. Later he knocked on the door again and asked her to sign something. She refused to sign without speaking to her social worker. The landlord then taped another Notice to End Tenancy to her door. When she removed the Notice, he then taped yet another copy to the door. The tenant said that she left the rental unit at this point because she felt harassed.

The tenant said that the landlord texted her on July 5th and said he wanted to check her toilet. She sent her son to open the door for him. The tenant said that on the following day, July 6th, in the morning, the landlord came to the rental unit with a plumber and insisted on entering. She said they left a mess for her to clean. The tenant said that later on the same day the landlord came with an electrician to check the electrical panel. She said they came and went four more times that day.

The tenant said that she checked with the City of Burnaby and was told that the rental unit was an illegal suite. The tenant claimed that she has been disturbed by the landlord on multiple occasions. She said the landlord continued to leave notes for her about electricians coming, about appliance delivery and about the landlord's complaints about smelling smoke.

The landlord served the tenant with another Notice to End Tenancy dated July 28, 2015. This Notice was a two month Notice to End Tenancy for landlord's use and it required the tenant to move out of the rental unit by September 30, 2015.

The tenant did not pay rent for August. She has claimed compensation consisting of the following:

- | | |
|-------------------------------------|-------------|
| • Moving in cleaning: | \$300.00 |
| • Removal of previous tenant stuff: | \$100.00 |
| • Stove cleaning: | \$58.00 |
| • Toilet not working: | \$200.00 |
| • Rent for suite: | |
| May: | \$700.00 |
| June: | \$700.00 |
| July: | \$700.00 |
| • Damage deposit: | \$350.00 |
| • Register mail + printing | \$35 + \$25 |

The tenant also claimed a sum exceeding \$2,000.00 for what she said were damages for breach of tenancy law and making illegal entries multiple times in a day.

The landlord testified that he gave the tenant a one month Notice to End Tenancy for cause because she violated the no smoking provisions in the lease and she misused the laundry facilities by using the facilities to wash other persons' laundry.

Concerning the cleaning of the rental unit, the landlord said that the tenant told him that she instructed the previous tenant not to perform any more cleaning, because the tenant has her own methods for cleaning. The landlord said that the tenant obtained the keys from the former tenant on April 24th. The landlord said he asked the tenant if the unit was ok before he returned the security deposit to the previous tenant and the tenant told him that it was ok.

The landlord claimed that he was not able to see the unit anytime during the month of June because the tenant was always rushing to go somewhere. He said that the tenant said something to him in June about the toilet not flushing properly and he got a plumber to fix it. The landlord said that the tenant told him that it had not been working

properly since she moved in, but she also told him after she moved in that everything was ok.

The landlord complained that the tenant used an outside area near a common entrance door to the rental property as a smoking place that she used along with her boyfriend and her sister. The landlord said that he complained to the tenant because it was a common passage. The landlord said that he and his wife are allergic to smoke and they could not use their sundeck or open windows because of the smoke.

The landlord said that on June 11th the tenant and her boyfriend were outside the rental unit smoking when the smoke alarm for the whole house went off. The landlord said that the tenant's boyfriend was still outside smoking. The rental unit was full of smoke and the windows were closed. He told the tenant to open the windows and door to clear out the smoke. He said that found out later that the tenant had left something on the stove cooking while she was outside and she did not know what was going on inside because all windows and door were closed.

The landlord acknowledged that he gave the tenant another 2 month Notice to End Tenancy for landlord's use dated July 28, 2015 and he said the tenant told him she is not paying rent for August because she is moving out at the end of August and she is getting the last month rent free because of the notice. The landlord said he will return the tenant security deposit if the rental unit is clean and in order after the tenant has moved out.

The landlord said in his written submission that he did not complain about visitors; he said that: "My concern is kids visiting or baby sitting." The landlord also said that: "Visitors see me at times because I own it, live there, work in my garden, in my garage and do our laundry in the laundry room."

Analysis

The tenancy has ended and as stated, there is no longer any basis for orders relating to access, repairs or relating to an order for possession because the tenancy has ended. The tenant has claimed a monetary award for the items listed above. She has claimed for compensation for cleaning and for a malfunctioning toilet and as well she has claimed a refund of all rent paid during her tenancy. In addition she claimed a further sum greater than \$2,000.00 because she said the landlord breached the tenancy agreement by illegally entering the rental unit.

The tenant obtained the keys and access to the rental unit directly from the former tenant before her tenancy was scheduled to commence. I find that she is not entitled to claim compensation for her cleaning because she insisted on performing the cleaning herself because she has her own particular standards of cleanliness. I deny the

tenant's claim for cleaning. The tenant thwarted the ordinary procedures for conducting a move-in inspection with the landlord; she took possession early and thereby prevented the landlord from ensuring that the rental unit was in acceptable move-in condition before the tenancy began and she insisted upon performing the cleaning herself. I find that the landlord was not provided an opportunity to perform necessary cleaning before the tenancy began and the tenant's claim for cleaning and disposal costs is denied.

With respect to the claim for compensation for a malfunctioning toilet, the tenant made no written request for a repair. When she verbally advised the landlord that there was a problem, he has a plumber make the necessary repair. In the absence of a written request for repair of the toilet, this claim is denied.

The tenant claimed that the landlord interfered with her use and enjoyment of the rental unit, by denying her rights to have visitors and denying full use of the rental unit, going so far as to restrict her bathing rights.

This short tenancy was dysfunctional from the outset, in part because the tenant and her guests were smokers. The landlord was aware that the tenant smoked when they agreed to rent the unit to her and if smoking was such a serious concern, then they should have declined to rent to her. I find that the landlord did interfere with the tenant's use and enjoyment of the rental unit by directing her use of the bath, by complaining about children visiting her and by too frequent entrances into the rental unit without proper notice. I do not find that the landlord's conduct was so outrageous that it would justify the tenant's claim for a refund of all rent paid from the outset of the tenancy. As well, I do not find that the landlord's entries into the rental unit and his notes and notices to her constitute and award of damages in any amount. The tenant's claim for and award of \$2,200.00 for breach of tenancy law is dismissed without leave to reapply.

I accept the tenant's evidence that the incident involving the smoke alarm on June 11th was caused by the former tenant's failure to properly clean the stove. I find that the tenant is entitled to recover the sum of \$58.00 as claimed for her time and materials to clean the stove.

I find that the landlord did interfere with the tenants use and quiet enjoyment of the rental unit by placing unjustified restrictions on her bathing and by interfering with and restricting her guests, particularly the small children she wished to have visit her at the rental unit. The landlord must accept that some inconvenience will result from the rental of a suite in his house and he may not place undue restrictions upon his tenant.

I find that an award of \$350.00, being the equivalent of a half month's rent is an appropriate amount to compensate the tenant for the interference with and restrictions upon her use, occupancy and quiet enjoyment of the rental unit.

The tenant is not entitled to recover the costs of serving her application and submitting evidence; her claim for registered mail and printing costs are denied. I allow the tenant's claims for a monetary award in the total amount of \$408.00. All other claims, are dismissed without leave to reapply, save for the claim for the return of her security deposit. The claim for the return of her security deposit was made prematurely and if there is a dispute about the return of her deposit, the tenant has leave to apply for its return.

Conclusion

The tenant has been granted a monetary order in the amount of \$408.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: October 08, 2015

Residential Tenancy Branch

