



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC; OPB; MND; MNDC; MNSD

Introduction

This is the Landlord's application, filed August 8, 2015, for an Order of Possession; a Monetary Order for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; and to apply the security deposit towards partial satisfaction of her monetary award.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail. The Tenant acknowledged service of the documents on August 26, 2015.

At the outset of the Hearing, it was determined that the Tenants moved out of the rental unit on or about July 29, 2015. The Landlord has taken back possession of the rental unit and therefore, the Landlord's request for an Order of Possession is dismissed.

Issues to be Decided

- Was there a tenancy agreement between the parties?
- Is the Landlord entitled to a monetary award for damages and compensation for loss of revenue for the month of August, 2015?
- May the Landlord apply the security deposit towards their monetary award?

Background and Evidence

The Landlord rents a house from her landlord which includes a separate 2 bedroom basement suite. The Tenant and another occupant rented the basement suite from the Landlord. The Tenant's monthly rent was \$675.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$337.50 on May 1, 2015. Rent included utilities.

There was no Condition Inspection Report completed at the beginning, or at the end of the tenancy.

The Landlord gave the following testimony:

The Landlord testified that the Tenant did not clean the rental unit at the end of the tenancy and that the Landlord spent 10 hours cleaning and painting the rental unit. She stated that the Tenant smoked in the rental unit, leaving burns in the carpets and the smell of smoke throughout. The Landlord also testified that the Tenant caused damage to the landscaping in the back yard, which had to be fixed.

The Landlord stated that there was no written tenancy agreement, but that the parties had agreed to sign one after an initial 3 month period, if “everyone agreed to continue the tenancy”.

The Landlord testified that she had a new tenant lined up to move in on August 1, 2015, but that he changed his mind when he saw the state of the rental unit after the Tenant had moved out. She said that the new tenant moved in on September 1, 2015.

The Landlord seeks a monetary award in the amount of **\$1012.50**, comprised of \$675.00 for loss of revenue for August, 2015, and \$337.50 for her labour in cleaning and painting the rental unit.

The Tenant gave the following testimony:

The Tenant stated that the “house wasn’t clean” when she moved in and that there was “evidence of the last person who moved in”.

The Tenant stated that she agreed to a “3 month trial”, but stated that she thought the Landlord would give her one month’s notice if the tenancy didn’t work out.

The Tenant stated that the Landlord sprayed water through her bedroom window at 10:00 p.m. in July, 2015. She testified that on the following day, the Landlord sent her a text message stating that she expected the Tenant and her “things gone by July 31st at noon”. The Tenant stated that on July 14, 2015, the Landlord changed her mind and told the Tenant she had to be out by July 28, 2014.

The Tenant stated that she was able to get a mutual agreement to end the tenancy on July 31, 2015, but that she had to cancel a critical medical appointment in order to move out. She stated that she moved out on July 29, 2015, and that the cancer agency put her up in a hotel and paid for a moving truck. The Tenant stated that she went back to the rental unit on July 31, 2015, to clean and that the locks were changed. The Tenant testified that the police “came and helped us get our stuff back”. She stated that she also gave the Landlord her forwarding address in writing on July 31, 2015, so that she could return the security deposit. The Tenant said that she filed her own Application for

Dispute Resolution on October 19, 2015, for return of the security deposit and aggravated damages.

The Landlord gave the following reply:

The Landlord stated that she was concerned about the Tenant's and her boyfriend's behaviours and that she only did what a social worker recommended that she do. The Landlord stated that it wasn't fair for her to bear all the responsibility and that the Tenant didn't ask for a tenancy agreement.

Analysis

Section 13 of the Act requires a landlord to prepare a tenancy agreement in writing; however, the Act defines a tenancy agreement as, "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit." In this case I find that the Landlord did not comply with Section 13 of the Act. Nevertheless, I find that the parties entered into an oral tenancy agreement. The Landlord accepted a security deposit, the parties agreed that rent was \$675.00, and was due on the first day of each month. They also agreed that rent included utilities.

Section 5 of the Act provides that landlords and tenants may not avoid or contract out of the Act and that any attempt to do so is of no effect. Tenancies can only end in accordance with the provisions of Section 44 of the Act. The Act does not provide for "trial tenancies".

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord did not provide sufficient evidence to prove her claim against the Tenant. I find that the Landlord, by locking the Tenant out of the rental unit, prevented the Tenant from cleaning the rental unit at the end of the tenancy. I find that the Landlord provided insufficient evidence that the Tenant caused damage to the rental unit. Contrary to Sections 23 and 35 of the Act, the Landlord did not prepare Condition Inspection Reports at the beginning or the end of the tenancy, which would be evidence of the state of cleanliness and repair of the rental unit on the date the Reports were completed.

The Landlord continues to hold the security deposit. I HEREBY ORDER that the Landlord return the security deposit to the Tenant forthwith, and provide the Tenant with a Monetary Order to that effect.

Conclusion

The Landlord's Application is dismissed **without leave to reapply**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$337.50** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: November 12, 2015

Residential Tenancy Branch

