



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$2390.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 23, 2015.

Issue(s) to be Decided:

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence

The tenancy began on March 1, 2015. The oral tenancy agreement provided that the tenant(s) would pay rent of \$500 per month payable in advance on the first day of each month. The tenant(s) did not pay a security deposit.

The landlord rents a 2 bedroom suite. However, he was away on business much of the time. At the request of the tenant's brother and another friend he agreed to rent one of the bedrooms to the tenant for \$500 a month. The tenant had exclusive use of her bedroom and shared use of the living room, kitchen and bathroom.

The landlord was away much of the time for the months of March, April, May and June. The tenant had the unit much to herself.

The tenant testified that for the months of July, August, and September the landlord brought other tenants into the rental unit who slept in the living room thereby infringing on her quiet enjoyment of the rental property. She testified as follows:

- They left a considerable mess and they failed to clean the rental unit. She spent considerable time cleaning.
- During this time the landlord spoke to her in a very disrespectful manner, harassed and intimidated her.
- The conduct of the landlord and his friends caused her significant stress as the Ministry had apprehended her child and the Ministry was in the process of determining whether this was not an appropriate housing for the child.
- She testified she stayed with a friend approximately 80% of the time during this period.
- She was not able to enjoy the cost of her cable hook up and seeks compensation of \$210 for the 3 month period.
- She acknowledged she took a cruise to Hawaii from September 22, 2015 returning October 3, 2015.
- The landlord took her bike (which had been given to her) and refused to return it.

The landlord testified as follows:

- He is in the business of renovating and constructing restaurants. He is out of town for much of the time on business.
- He testified his son and nephew came out from Ontario to assist him with a couple of major jobs and they stayed with him. His nephew returned at the end of August and his son returned to Ontario at the end of the first week of September.
- During the time they all worked long hours. For much of the time he rented 3 hotel rooms in Langley (he was working on a job in Langley) and they spent much of the evening in the hotel rooms. The landlord estimated they were in the rental unit for approximately 3 weeks during this period (and that was usually only at night or on the weekends).
- The landlord denied harassing the tenant. He testified the tenant has a drug problem and while she has a licence to smoke medical marijuana he objected to her smoking marijuana in the unit. The tenant denied smoking medical marijuana in the rental unit.

Analysis

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim to establish the following:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that in order to justify payment of damages under sections 67 of the Act, the Applicant tenant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in losses to the Applicant pursuant to Section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss, in this case the tenants, bears the burden of proof and the evidence furnished by the Applicant tenants must satisfy each component of the test below:

With respect to each of the tenant's claims I find as follows:

- a. The tenant claimed the sum of \$600 for the cost of cleaning. The landlord acknowledged responsibility for some of the cleaning. After hearing the disputed evidence of the parties I determined the tenant is entitled to \$300 of this claim.
- b. The tenant claimed the sum of \$1500 for reimbursement of the rent for the months of July, August and September. She testified that she was forced to leave 80% of the time because of the conduct of the landlord. The landlord disputes this. He testified his son, nephew and he spent much of the time in hotel rooms in Langley and were only home for about 3 weeks during this 3 month period. The tenant failed to keep a log as to when the landlord was there. She testified she was with a girlfriend 80% of the time and could not know where the landlord was. The landlord denied harassing the tenant. I determined the tenant failed to prove this claim. The oral tenancy agreement gave the tenant exclusive possession of her room and shared possession of the living room, kitchen and bathroom. In my view the tenancy agreement did not prevent the landlord from having his son and nephew spend some time with him as a guest.
- c. I dismissed the tenant's claim of \$210 for the cost of cable. The tenant failed to explain why she could not have hooked up the cablevision to a television in her room which was for her exclusive use. The landlord was not aware the tenant had purchased the cablevision. I determined the tenant failed to prove this claim.
- d. The landlord stated the tenant's brother had found the bike and given it to her. It has been in storage since she left and he is not used it. He is prepared to return the bike to her. I ordered that the landlord shall return the bike to the tenant. If the landlord fails to return the bike the tenant is at liberty to file a new Application for Dispute Resolution claiming the value of the bike.

I ordered the landlord(s) to pay to the tenant the sum of \$300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$300. I further ordered that the landlord return the tenant's bicycle to her.

Dated: November 17, 2015

Residential Tenancy Branch

