



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC

Introduction

This hearing dealt with an application by the tenant for an order cancelling the landlord's Notices to End Tenancy and a monetary order. Both parties attended the hearing and had an opportunity to be heard.

At the outset of the hearing the tenant advised that she was going to be moving out of the rental unit on February 29, 2016. The landlord requested an order of possession for this date. Accordingly, an order of possession is being provided to the landlord together with this decision and the tenant and the tenant's application for an order cancelling the landlord's Notices to End Tenancy is no longer in issue.

With respect to the tenant's request for a monetary order, I need to address an issue that came up about the tenant's evidence package. The tenant did not submit and serve her evidence in support of her application until Thursday, February 18th. As this was only two business days before the hearing, the landlord did not have time to submit and serve evidence in response. However, despite this late service of the tenant's evidence package, the landlord wished to proceed with the hearing of the tenant's monetary claim anyway.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?
If so, for how much?

Background and Evidence

This tenancy began on September 1, 2014. The rent is \$1200 per month. In November of 2015 there was very heavy rainfall in Vancouver and the rental unit was flooded twice. The tenant claims that for the period from November 13 – December 15, the rental unit was essentially unliveable. The tenant acknowledges that she was away on

pre-arranged vacations in Mexico during this period. The tenant was not clear as to the exact dates of her trips but did state that both trips were one week long. However, even though the tenant was away for these two week periods, the tenant left two dogs in the unit while she was travelling. Her third dog she had left with her mother. Apparently the landlord thought the tenant only had one dog but this detail is irrelevant to the claim in my view. The tenant testified that during the periods that she was in town while the flood clean-up was ongoing, she stayed with her mother. She testified that everything was wet and that it was essentially a “construction site”.

For her part, the landlord testified that the unit was liveable at all times. The landlord also testified that the tenant was offered another place to stay in the same building which the tenant declined. The reason for the tenant’s decision to decline this offer was not clear from the testimony. The landlord also testified that aside from the two trips to Mexico, the tenant was in fact living in the unit the rest of that time. In fact, the landlord testified that the tenant was there and making things “super difficult to get things done”. The landlord claims that the tenant would lock the contractors out of the unit and that if she had cooperated, the whole clean up would have been completed much more quickly.

The tenant responded to this by saying that the landlord was never there so how would she know? Further, the tenant acknowledged that she was not happy with the contractors coming and going with her dogs there. The tenant stated again that the place was not liveable because the carpets were “soaking wet”.

The landlord then responded by acknowledging that the carpets were wet but repeated that the tenant’s obstructions made the clean- up much longer than it needed to be.

Analysis

The tenant has made a monetary claim in the amount of \$1200 or one month’s rent for loss of quiet enjoyment due to the flood and the subsequent restoration work.

The landlord has disputed this claim in its entirety based on the fact that the flood was not caused by the actions or inactions of the landlord, that the tenant was away for at least two weeks of the period claimed and that the tenant disrupted efforts to restore the unit in a timely way.

In reviewing the evidence and testimony in this case, it is clear that the rental unit became unliveable for a period of time due to two consecutive floods. What is also clear is that the tenant was out of town for two weeks out of the four week period for

which she is claiming compensation. I also accept the landlord's assertion that the tenant was uncooperative with the restoration effort because the tenant acknowledged that she was not happy that contractors were coming and going with her dogs there. I also accept the landlord's testimony that she offered the tenant alternate accommodation but that this offer was refused by the tenant.

In any application for compensation for loss of quiet enjoyment, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In the present case, I find that the tenant is entitled to some compensation for loss of use although my award is well short of what the tenant has claimed due to the fact that the tenant was away for two weeks, was uncooperative with the restoration efforts and refused alternative accommodation offered by the landlord.

I find that the tenant is entitled to \$150.00 in compensation for loss of quiet enjoyment.

Conclusion

I find that the tenant has established a monetary claim in the amount of \$150.00. I order the landlord to pay this amount to the tenant. If the landlord does not pay this amount to the tenant the tenant may file and enforce this order in Small Claims 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: March 7, 2016

Residential Tenancy Branch

