



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELOWNA JAPANESE CANADIAN COMMUNITY SENIOR CITIZENS
SOCEITY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Preliminary matters

The Landlord's Counsel indicated that the Landlord's evidence package was sent to the Tenant by registered mail and was refused by the Tenant. As a result the Landlord's Counsel said he believes the Tenant is unaware of some of the Landlord's evidence. The Tenant said she did not know who the registered mail package was from so she refused to accept it. The Arbitrator explained that documents are deemed to be served 5 days after they are mailed by registered mail and not accepting a registered mail package does not prevent the documents from being admitted to the hearing. The Arbitrator accepted the Landlord's evidence package into the hearing evidence.

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations or tenancy agreement.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on November 12, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there loss of damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started in November, 2009 as a month to month tenancy. Rent is \$320.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$286.00 on October 9, 2009.

The Tenant said that the Landlord was completing repairs to the rental units in the building by replacing doors, windows and making other repairs. The Tenant continued to say that on June 23, 2015 the Landlord allowed an electrical contractor into her unit to replace the thermostat. The Tenant said the maintenance man E.R. let the electrician into the Tenants unit. After the repairs were completed the Tenant discovered that \$450.00 of cash was no longer in a secret place where she hides money. The Tenant said she is not sure who stole the \$450.00 but it must have been E.R. or the electrician because they were the only two people in her unit around that time. As a result the Tenant said she is claiming compensation from the Landlord of \$450.00 because the Landlord allowed an unlawful entry into her rental unit. The Tenant said the Landlord did not give her proper notice to enter her rental unit and the unit was entered without the Tenant being present. The Tenant said this is wrong and is the reason her money is gone. The Tenant continued to say that she filed a Police report and the Police investigated the incident. The Tenant said she was not aware of any charges being filed.

The Landlord's Counsel said that the Tenant's claim is unsubstantiated and this is confirmed in a letter to Counsel from the police containing part of the police report indicating "theft unsubstantiated". Further the Landlord's Counsel said the Landlord posted Notices in the mail room of work being done and when the work was to be done. The Landlord's Counsel said the Tenant has not provided evidence or proven a theft happened nor that the Landlord is responsible for any theft if it did happen.

The Tenant provided a witness E.K. (a neighbour tenant) who indicated that he had work done in his unit as well and had items stolen which he was compensated for. The witness E.K. said that he did not receive proper notice to enter his unit as well and that the building maintenance man E.R. had keys to the units and helped the contractors with access to the building.

The Landlord's Counsel asked the witness E.K. if he knew where the Tenant's secret hiding place was or where she kept her money. The witness said he did not know either of these things.

The Landlord Counsel called the maintenance man E.R. as a witness for the Landlord. The witness E.R. said he does not have keys to the units and that the contractor had the keys. He said he was only there to help or observe the contractors doing the work. The witness E.R. said he did not enter the Tenants unit on June 23, 2015 when the electrician replaced the thermostat and he watched the electrician the entire time the electrician was in the Tenant's rental unit. The witness said you can see the thermostat from the door. The witness E.R. said the electrician took about 15 minutes to change

the thermostat and then they left. The witness E.R. said neither he nor the electrician took any money from the Tenant's rental unit.

The Tenant said she disputes that the witness E.R. could see the electrician all the time he was in the unit as she has seen the witness E.R. wonder around when helping the contractors and the bathroom door if open could have blocked his view.

The witness E.R. said nothing blocked his view and he watched the electrician the entire time he was changing the thermostat.

The Landlord's Counsel called a second witness the electrician A.D. who said he thought the maintenance man gave him access to the Tenant's unit. Further the witness A.D. said he did not take anything from the rental unit, he did not see anyone else take anything and he is a bonded electrician.

The Tenant said there is a contradiction because the maintenance man said the contractor had the keys and the contractor said the maintenance man had the keys.

The Property Manager R.Y. said the contractor changed all the locks in the complex and the contractor had the keys to all the units.

The Tenant said that the witness E.R. is a hostile witness and there have been many problems with him in the complex.

In closing the Landlord's Counsel said that both the electrician and the maintenance man testified under oath that they did not steal any money from the Tenant's rental unit on June 23, 2015. Further the Police report says it is an "unsubstantiated theft" which means the Tenant has not proven a theft happened or that the Landlord is responsible if a theft did happen.

The Tenant said in closing that the Landlord has not proven that they are not responsible for the theft and there have been many problems and mistruth that have happened in the rental complex.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss and the applicant must show how they mitigated or minimized the loss.

In this situation it is basically the Tenant's word against the Landlord's word. It is the applicants burden to prove the claim and in the case of it only being the applicant's word against the respondent's word that burden of proof is not met. I find the Tenant has not met the burden of prove to substantiate a theft actually happened. Further I reviewed

the Police evidence and the report states that this is an “unsubstantiated theft”. With no corroborative evidence to prove a theft actually happened and no evidence that the Landlord was directly responsible I find on the balance of probabilities that the Tenant has not established grounds to prove the Tenant’s claim. I dismiss the Tenant’s application without leave to reapply due to lack of evidence.

Conclusion

The Tenant’s application is dismissed without leave to reapply.

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: June 07, 2016

Residential Tenancy Branch