



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, FF

Introduction

This is an application brought by the tenant requesting a Monetary Order in the amount of \$1585.00, besting a repair Order, and requesting recovery of the filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

At the beginning of the conference call the applicant stated that the issues she wants to deal with are the following:

- She wants an Order for the landlords to stop trying to evict her.
- She wants to deal with her monetary claim of \$1585.00.

Background and Evidence

This tenancy began on October 30, 2015 with a monthly rent of \$1750.00, due on the first of each month.

The tenancy was originally a fixed term tenancy until June 30, 2016, at which time it continued as a month-to-month tenancy.

The tenant testified that the landlords attempted to get her to sign a mutual agreement to end the tenancy, which she refused to sign, and she believes this is harassment by the landlords, and is requesting an Order that the landlords stop any attempts to evict her.

The tenant also testified that when she moved into the rental unit the rental unit was not clean and she had to spend approximately 4 hours cleaning the unit. She further testified that the landlord watched her clean and did not attempt to assist her. She is therefore requesting an Order for the landlord's to pay her \$80.00 for 4 hours cleaning time.

The tenant further testified that at the beginning of the tenancy there was a lot of junk and garbage left behind at the rental property, which she had to remove to the dump, and therefore she is requesting an Order for the landlord's to reimburse her for 4 hours time and dump fees for a total of \$85.00.

The tenant further testified that, since the landlords were absentee landlords, she had to deal with repair people and tradespeople, when repairs were needed at the rental unit, and she feels she should be reimbursed for her time, of approximately 8 hours, for a total of \$160.00.

The tenant further testified that the landlords have not made the garden shed available for her use and have kept it for their own use throughout the tenancy, even though the landlords stated, in a December Email, that they would take all items out of the shed. She further states that since storage is included in her tenancy she should have had use of the garden shed, and since she did not, she has had to rent storage space, for the past eight months, at a total cost of \$1260.00

The tenant is therefore requesting a total monetary claim of \$1585.00.

Under questioning from the landlord's lawyer the tenant admitted the following:

She never asked the landlord's to do further cleaning at the beginning of the tenancy, she simply did it herself, and did not tell the landlords she would be charging them for this cleaning.

She never asked the landlords to arrange to have any junk or abandoned items removed from the rental property; she simply did it herself, and, again, did not tell the landlords at the time she would be charging them for removing these items.

She never asked the landlord's to arrange to have someone else deal with tradespeople or repairs at the rental property; she simply did it herself and did not tell the landlords she expected to be paid for her time.

At the beginning of the tenancy the landlords did not say that the garden shed was specifically included in the rental agreement, she simply assumed it was because the tenancy agreement stated that storage was included. She further stated under questioning that there were some other areas of storage in the rental property, including under the stairs and in the basement.

Legal counsel for the landlord stated that it is the landlords position that the garden shed was never included with the tenancy, and that the landlords have always stored belongings in that shed from the beginning of the tenancy, and the tenant has never made an issue of it until now.

Legal counsel for the landlords also stated that, it is the landlords position that, had the tenant requested further cleaning or junk removal at the rental property they would have arrange to have the work done, however the tenant never made such a request.

Legal counsel for the landlords also stated that it's the landlord's position that, had the tenant requested that they appoint an agent to deal with trades people they would have done so, however again the tenant never made such a request.

Legal counsel for the landlords therefore requests that this monetary claim be dismissed in full.

Further the landlords testified that they are not attempting to evict the tenant, and since the tenant was unwilling to sign a mutual agreement to end the tenancy, they have not pursued the matter further.

Analysis

The tenant has requested that I issue an Order for the landlords to cease attempting to evict her from the rental property and that she believes this is harassment on the part of the landlords. A very similar case was dealt with in the Supreme Court case of *Whiffin v. Glass & Glass* (July 26, 1996) *Vancouver Registry No. F882525 (BCSC)*, That case is the authority over this issue, and states that as long as the landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that a landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy is to dispute the notice ending the tenancy once given.

I have no authority to Order the landlords to not evict a tenant, and as stated above, if the tenant gets an eviction notice, the tenants remedy is to dispute that notice at the time.

With regards to the tenants monetary claim, it is my decision that the tenant has not established any monetary claim against the landlords.

The tenant has admitted that she did not request that the landlord arrange for further cleaning at the beginning of the tenancy, she did not request the landlord arrange to remove garbage or abandoned belongings at the beginning of the tenancy, and she did not request that the landlord make arrangements to have someone else deal with trades persons coming and going from the rental property. If the tenant believed the landlord was not meeting the landlord's obligations under the tenancy agreement, the tenant must first request that the landlord do so, however in this case since the landlord was never given any opportunity to rectify any of the alleged

discrepancies, the tenant cannot now expect to charge the landlord for dealing with the issues herself.

Further, the tenant has not met the burden of proving that the garden shed was ever included in the rental agreement. The tenant has admitted that she was never specifically told that the garden shed was included in the tenancy, and has admitted that the landlords have had their belongings in the shed from the beginning of the tenancy.

The tenant had claimed that the landlords had informed her in a December 2015 e-mail that they would be emptying the shed; however it is my finding that that is not what the e-mail says and in fact the e-mail states the following:

“Hi S.

We are here now. We don't need in the house. We are just going to grab a load from the garden shed, not sure which day. C. may want to see inside the house but I will call you and see if you are home.

I will get you the insurance info. Sorry been busy

N.” **(note I have only included the first initial of names included in the e-mail)**

As you can see from this e-mail the landlord's only state that they are grabbing a load from the shed and say nothing about emptying the shed.

Conclusion

I have no authority to Order the landlord's to not give eviction notices to the tenant and therefore I deny this request.

I dismiss the tenant's full monetary claim without leave to reapply.

Although the applicant had checked off the box on the application requesting a repair order, no such request was made during the hearing, and therefore no repair order is issued.

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: July 08, 2016

Residential Tenancy Branch