



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA, INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep all or part of the security and pet deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy was due to start on December 01, 2015. The tenant testified that he never moved into the unit although he did have the keys and did conduct his employment as resident caretaker for the landlord from the unit. The landlord testified that the tenant was in possession of the unit from December 01, 2015 to December 21, 2015. Market rent for this unit was \$840.00 per month and as the tenant was employed by the landlord as a resident caretaker the tenant received a rent rebate of \$440.00 per month. This brought the tenant's rent to \$400.00 per month. The tenant paid a security deposit of \$200.00 and a pet deposit of \$200.00 on November 30, 2015.

The landlord testified that the tenant entered into a tenancy agreement on November 17, 2015. This was as a condition of employment as the resident caretaker for the building. The tenant also signed an employment contract which stated that if he ends his employment or tenancy he must provide the landlord with 30 days written notice.

The landlord testified that there were some minor deficiencies in the unit when they did the move in condition inspection of the unit; however, the tenant was still required to move into the unit as a condition of his employment whether or not he liked the unit. The landlord testified that the only deficiencies were the colour of the paint that was not standard, the bedroom blinds were bent and there were a few closet doors missing.

The landlord testified that the tenant said he did not like the unit on December 01, 2015 when they did the move in inspection; however, it was not until December 21, 2015 that the tenant gave written notice to end his tenancy and employment. The landlord testified that it is their position that the tenant lived and worked in the unit from December 01 to December 21, 2015. The tenant's rent for December has been deducted from his earnings for that month and the landlord therefore withdraws their claim to recover a loss of rent for December. The landlord also withdraws their claim for unpaid utilities.

The landlord testified that as the tenant did not provide the required 30 days written notice to end his tenancy the landlord was unable to re-rent the unit for January 01, 2016. The unit was not re-rented until February 01, 2016 despite placing an advertisement on Craigslist and on the landlord's website. The landlord seeks to recover the full market rent for January, 2016 of \$840.00 as the tenant was no longer employed by the landlord at that time.

The tenant disputed the landlord's claim. The tenant testified that he never moved into the unit although he did have access to the unit for work related things. The tenant testified that when they did the move in condition inspection he was very unhappy about the condition of the unit. The deficiencies were more than minor repairs and the unit was not habitable. The landlord was fully aware of these deficiencies as the landlord recorded them on the move in condition inspection report. There was damage to the entry hall stairs, the walls and ceilings were damaged, there was painting needed throughout the unit, the tub and toilet were dirty, doors were missing, the patio and deck floors had holes, the door screens were missing. These deficiencies were not minor and the unit was not fit for occupation without extensive cleaning and repair work being done.

The tenant testified that the landlord did not send anyone to do the work in the unit for two weeks and when someone did arrive they did not do all the repairs. By December 21, 2015 the tenant felt he could not move into the unit so he called the owner and asked them if they required a 30 day notice to find a new resident caretaker. The tenant testified that the owner said the tenant did not have to provide 30 days' notice as he already had someone to replace him as a resident caretaker. The tenant testified he then put it in writing and returned his keys.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

I am not persuaded by the landlord's evidence that the unit only required minor repairs. In this matter the landlord has the burden of proof to show that the repairs required were minor and they have failed to do so. The landlord did not provide a copy of the move in condition inspection report and therefore I find I prefer the evidence of the tenant who read the contents of that report to me during the hearing. It is therefore my decision that the repairs, cleaning and maintenance of the unit had been seriously neglected by the landlord prior to the tenant moving into the unit. It is not the tenant's responsibility to do these repairs or to clean his unit when he moves in just because he has employment with the landlord.

I refer the parties to s. 32(1) of the *Act* which states:

Landlord and tenant obligations to repair and maintain

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find the landlord did not provide the rental unit in a manner that was suitable for occupation. It is irrelevant whether or not the tenant was employed by the landlord as the resident caretaker; the landlord may still not contract out of the *Act* when a tenancy has also been created. Therefore s. 45(3) of the *Act* allows a tenant to end his tenancy if the landlord has not complied with a material term of the tenancy agreement. The tenant is required to put this in writing to the landlord; however, as the landlord should have been fully aware of the deficiencies in the unit when they did the move in condition inspection and failed to fully remedy this at least by December 21, 2015 then I find the tenant was able to end his tenancy without providing the required notice. The landlord's application for loss of rent for January, 2016 is therefore dismissed.

As I have dismissed the landlord's application for monetary compensation I find the tenant is entitled to recover his security and pet deposit of \$400.00 from the landlord pursuant to s. 38(6)(b) of the *Act*.

As the landlords application has no merit I find the landlord must bear the cost of their filing fee.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$400.00** for the security and pet deposit. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: August 08, 2016

Residential Tenancy Branch