



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 07, 2016 the Application for Dispute Resolution, the Notice of Hearing, documents submitted to the Residential Tenancy Branch on March 17, 2017, and documents submitted to the Residential Tenancy Branch on April 03, 2017 were all personally served to the Landlord. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for costs associated to a tenancy not proceeding?

Background and Evidence:

The Tenant stated that:

- she and the Landlord signed a tenancy agreement in August of 2016;
- the tenancy agreement specified that the tenancy would begin on September 15, 2016;
- the tenancy agreement specified that the tenancy was for a fixed term, the fixed term of which was to end on April 17, 2017;
- the tenancy agreement specified that rent for September was \$850.00 and thereafter was \$1,700.00 per month;
- she had a large storage container moved to the rental unit on September 01, 2016, with the intent of moving the contents into the unit upon taking possession of the unit;
- the Landlord verbally agreed she could move into the rental unit early;

- on September 03, 2016 the Tenant used a rented vehicle to move the remainder of her property to the rental unit;
- upon arriving at the rental unit she was met by a male, whom she believes is the Landlord's brother, who informed her that she could not move into the unit as he was intending to live in the unit;
- she contacted the Landlord who told her to move into the rental unit regardless of what the male was telling her;
- the police attended the rental unit and told her that they did not have authority to intervene;
- on September 03, 2016 she moved her property and the rental vehicle to her sister's home; and
- a few days after September 03, 2016 the large storage container was moved from the property of the rental unit to her sister's home.

The Tenant submitted a copy of a tenancy agreement that corroborates her testimony regarding the terms of the agreement.

The Tenant is seeking compensation for costs associated to her move to the rental unit, which include:

- \$1,021.59 for the large storage container;
- \$190.40 for renting a moving van;
- \$50.00 in gas for the moving van;
- \$150.00 for the cost of a baby sitter;
- \$50.00 for food; and
- \$17.20 for toll charges.

The Tenant submitted two receipts for the large storage container, which total \$990.00, but was unable to locate a receipt for the remaining amount of \$31.51.

The Tenant submitted a receipt for the moving van and gas for the moving van.

The Tenant submitted a letter from a person who charged the Tenant \$150.00 to babysit her children. The Tenant stated that she originally intended to leave her children with this person for 8 hours while she moved into the unit but ended up leaving them overnight due to the fact she was not permitted to move into the unit.

The Tenant did not submit receipts for food costs or toll charges. She stated that they intended to eat at the rental unit during the move but were forced to eat at a restaurant because they were prevented from moving into the unit.

The Tenant is seeking \$520.81 in compensation for the stress and aggravation of being prevented from moving into the rental unit. She stated that because they were unable to move into the unit they had to find alternate accommodations in the community; they had to make temporary arrangements for her daughter to attend school; and she, her husband, and her three children had to temporarily reside with her aunt.

Analysis:

On the basis of the undisputed evidence I find that she entered into a tenancy agreement with the Landlord; that the agreement was for a fixed term tenancy, the fixed term of which runs from September 15, 2016 to April 17, 2017; and monthly rent was \$1,700.00.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant suffers a loss as a result of the landlord breaching the *Act*. On the basis of the undisputed evidence I find that the Landlord breached a material term of the tenancy agreement when she did not ensure the rental unit was available for the Tenant to occupy. I therefore find that the Tenant is entitled to recover costs she incurred when she attempted to move into the rental unit.

On the basis of the receipts submitted in evidence, I find that the Tenant incurred costs of \$1,380.40 when she attempted to move into the rental unit. As the Tenant was prevented from moving into the unit, I find that she is entitled to recover these costs.

In addition to establishing that a tenant suffered a loss, a tenant must also accurately establish the cost of that loss whenever compensation for loss is being claimed. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. In these circumstances I find that the Tenant failed to establish the true cost of the toll charges, meals, and \$31.51 of the cost of renting the large storage container and I therefore dismiss those claims.

Section 28 of the *Act* guarantees tenants the right to the quiet enjoyment of their rental unit including, but not limited to, reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord breached the Tenant's right to the quiet enjoyment of the rental unit when she did not ensure the rental unit was available for the Tenant to occupy. I find that the stress of making alternate arrangements on the day of the intended to move and the subsequent need to make living arrangements is a significant breach of this right and I find that the Tenant is entitled to the full amount of her claim of \$520.81 in compensation for "stress and aggravation".

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$2001.21, which includes \$1,380.40

for moving costs, \$520.81 for a breach of her right to quiet enjoyment of the rental unit, and \$100.00 for filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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*.

Dated: April 06, 2017

Residential Tenancy Branch