



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

On November 23, 2016, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement. The matter was scheduled as a teleconference hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on June 1 2016, as one year fixed term tenancy to continue until May 31, 2017. Rent in the amount of \$1,200.00 was due on the first day of each month. A security deposit of \$600.00 was paid by the Tenant to the Landlord.

The parties testified that the Tenant moved out prior to June 30, 2016, less than one month into the fixed term tenancy.

The Tenant submitted that the tenancy included the use of a washer and dryer within the rental unit. She submitted that the dryer was unusable because it presented a health and safety risk which forced her to move out of the rental unit.

The Tenant is seeking compensation for the following items:

| | |
|----------------------------|------------|
| June 2016 Rent | \$1,200.00 |
| Movers | \$600.00 |
| Time to move | \$400.00 |
| Loss of affordable housing | \$1,000.00 |
| Storage Unit Rental | \$200.00 |

The Tenant submitted that there was a sign on the dryer door that warned of a fire risk. She submitted that the dryer was vented inside the rental unit, which is not according to fire code. The Tenant provided a video file showing the dryer and the ventilation hose. The Tenant provided a photograph of the caution sign on the door of the dryer that states that the dryer must be connected to an exhaust to the outdoors. The Tenant also testified that she is sensitive to dust and had concerns with the lint trapping system.

The Tenant submitted that she identified the safety issue with the Landlord and tried to resolve the issue. The Tenant testified that because of the safety issue and lack of response from the Landlord she had to move out.

The Tenant testified that she is seeking to recover the costs for moving into the unit and out of the rental unit. She testified that it cost her \$600.00 for movers.

The Tenant is also seeking to be compensated for the time she spent moving. She testified that she missed work. The Tenant is seeking \$400.00.

The Tenant is seeking compensation of \$1,000.00 from the Landlord because the rental property she rented after she moved out was substantially higher rent than what she was previously paying.

The Tenant is seeking \$200.00 for the cost of renting a storage locker for the one and a half month period between moving out of the rental unit and finding a new rental unit.

In response, the Landlord testified that the rental property was purchased in May 2015. He submitted that fire inspectors inspected the building and a business licence was issued. He submitted that all the required permits were satisfied.

The Landlord submitted that the dryer had an indoor dryer vent kit installed that is CSA approved for use in Canada. The Landlord testified that a dryer vent kit should not be used with

a gas fueled dryer. The Landlord testified that the dryer in the rental unit is an electric dryer. The Landlord provided documentation on the dryer vent kit.

The Landlord testified that lint from the dryer is captured by a venting system which involves a container filled with water.

The Landlord testified that the previous Tenant reported no issues or problems with the dryer.

The Landlord provided a letter from the City dated May 11, 2017, in response to the Landlord's clarification on the use of the indoor dryer kit. The Letter indicates that the BC Fire Code and City Fire Bylaw do not specifically prohibit the use of the device as long as it is CSA approved and properly installed and maintained. The Letter provided the opinion that the preferred method of venting a dryer is to the outdoors.

The Landlord testified that he was never ordered to remove the unit, but he did remove it at the end of June 2016, to follow what was recommended.

The Landlord testified that the Tenant's documentary evidence of an email dated June 3, 2016 contains incorrect information. He testified that the dryer was not recently installed in the bathroom, and that modifications were not made to the plumbing and wiring.

The Landlord testified that the Tenant sent him a letter dated June 16, 2016, asking the Landlord to rectify a number of issues she has with the dryer. The Tenant asked the Landlord to rectify the deficiencies by June 22, otherwise the Tenant would file a complaint with the Residential Tenancy Branch.

The Landlord testified that the Tenant sent him another letter on June 16, 2016, suggesting that the Landlord be agreeable to end the tenancy and return the security deposit.

On June 17, 2016, the Landlord wrote to the Tenant and agreed to end the tenancy for June 30, 2016. The parties signed a mutual agreement to end tenancy on June 17, 2016, effective at 1:00 pm on June 30, 2016.

The Landlord submitted that the Tenant agreed to end the tenancy prior to the expiration of her letter of demand to fix deficiencies by June 22, 2016.

The Landlord also submitted that the Tenant rented a storage locker on June 18, 2016. He submitted that on the day of the move out, the Tenants friend made a comment to the Tenant, asking what she is going to do with all her furniture when she goes travelling.

In response, the Tenant testified that she never travels.

Analysis

Residential Tenancy Policy Guideline #8 Unconscionable and Material Terms is intended to help the parties to an application understand issues that are likely to be relevant regarding unconscionable and material terms in a tenancy agreement. The Guideline provides:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement², and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant is seeking compensation for what she submits was a health and safety risk. I find that there is insufficient evidence from the Tenant to establish that the dryer presented a health or safety risk. I accept the Landlord's letter from the city that indicates that the BC Fire Code and City Fire Bylaw do not specifically prohibit the use of the device as long as it is CSA approved and properly installed and maintained.

I don't accept the Tenant's submission that due to a lack of response from the Landlord she had to move out. The Tenant informed the Landlord in writing of the problem and asked the Landlord to fix the problem by a deadline, or else she would file a complaint with the Residential Tenancy Branch. The Tenant chose to end the tenancy by mutual agreement a day later, rather than wait for the Landlord to fix the problem by the deadline. The Tenant chose to end the tenancy rather than applying for dispute resolution.

Even if there had been a breach of a material term of the tenancy, I find that the Tenant did not follow the proper steps to end a tenancy for a breach of a material term of a tenancy.

The Tenant chose to end the tenancy by mutual agreement and is responsible for her moving and storage costs. The Tenant's application for compensation in the amount of \$3,400.00 is dismissed in its entirety.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was not successful in her application, I decline an order for the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

Conclusion

The Tenant chose to end the tenancy, rather than give the Landlord an opportunity to fix an issue. Consequently, the Tenant is responsible for her moving and storage costs.

The Tenant's application for compensation is dismissed in its entirety.

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 16, 2017

Residential Tenancy Branch