Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, RPP

Introduction

This is an application brought by the tenant requesting a monetary order in the amount of $6645.96, and requesting recovery of the $100.00 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

The issues to be decided are whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

I will not deal with the tenants request for recovery of her security deposit or any requested penalty, as the security deposit has been dealt with in a previous arbitration.

Background and Evidence

The tenant moved into this rental unit on September 2, 2016, and moved out of the rental unit on April 15, 2017.

The monthly rent for this unit was $650.00, due on the first of each month.

The tenant testified that, when she moved into the rental unit, she found that the rental unit was in need of painting, and therefore she agreed to allow the landlord to have her sleigh bed, if the landlord painted the rental unit.

The tenant further states that she subsequently found out that it is the landlord's responsibility to paint the rental unit on a regular basis, and therefore, she believes she should not have had to exchange her sleigh bed for painting, and that the landlord should be returning her sleigh bed, or reimburse her the cost of the bed.

The tenant further testified that she did not receive the keys for, or move into, the rental unit until September 2, 2016 and therefore she believes she should be reimbursed for one day's rent as she paid for the full month of September 2016.

The tenant further testified that she believes she should get her full rent back for the full term of the tenancy, because she did not have quiet enjoyment of the rental unit for the full term of the tenancy. She further states that the landlord came over to her rental unit frequently without her requesting him to do so, and she also believes the landlord stole her driftwood collection when she was not at the rental unit.

The tenant further stated that neither she nor anyone else saw the landlord enter the rental unit when she was not there, nor did she or anyone else see the landlord take any of her driftwood collection however, as stated in witness letters she has provided, other people saw the landlord at the property on numerous occasions and therefore it is her belief that the landlord did enter her rental unit, and the landlord did take her driftwood collection.

The tenant further stated that the landlord had an unsafe heater in the crawlspace of the building that put her safety at risk, and it was removed by the fire department after she reported its existence.

Therefore the total claim requested is as follows:

replacement cost of sleigh bed	$1000.00
Return of one day rent for Sept, 2016	$20.96
Return of all rent paid during the tenancy	$4875.00
Filing fee	$100.00
Total	$5995.96

The landlords testified that this rental unit had been painted approximately one year before the tenant moved into the unit and it did not require painting as the paint was in good condition.

The landlords further testified that the tenant requested that the rental unit be painted, as she wanted a different color in the rental unit, and she agreed to give us her sleigh bed in exchange for having the unit painted.

The landlord further testified that they lived up to their part of the agreement, and painted the rental unit for the tenant, even though painting was not needed, and was simply cosmetic. They therefore do not believe that they should be required to return the sleigh bed, or compensate the tenant for the cost of sleigh bed.

The landlords further testified that the tenant agreed, verbally in August, to rent this unit for September 1, 2016, and therefore the tenant is liable for the full rent for the month of September 2016, even though she didn't move into the rental unit until September 2, 2016.

With regards to the tenants claim of loss of quiet enjoyment, the landlord stated that they completely deny the tenant’s claims, and state that it was the tenant who interrupted their quiet enjoyment by frequently requesting the landlord attend the rental unit for numerous different things such as the following:

- Frequently calling as she lost her keys are locked herself out.
- Calling to have a ceiling fan installed.
- Calling because she needed a lightbulb changed.
- Calling to have a mirror hung.
- Calling as she wanted a light fixture exchanged.
- Frequently asking me to show her how the heating system worked.
- Asking me to move her bicycle.
- Requesting we go over to store her lawnmower in the secured shed.
- Asking me to hang a curtain rods.
- Asking me to put her tires in the back of her SUV.

The landlord further states that the list goes on and on.

The landlords further testified that they never entered the rental unit without the tenants permission unless, they had given the required 24 hours written notice to enter, and at those times they actually gave more than the required 24 hours’ notice.

The landlords further testified that at no time did they ever take any of the tenant's driftwood collection and, as it was outdoors, anyone could have come by and taken her driftwood.

In their written statement, the landlords state that the electric heater had nothing to do with this tenant, as it was in the crawlspace of another rental house they own, and the tenant actually been trespassing when she discovered the heater.

In response to the landlord's testimony the tenant testified that she has no proof that the rental unit needed painting however in her opinion the rental unit was in need of painting when she moved into it, and therefore she does not believe that she should have been required to exchange her bed to have that painting done.

The tenant further testified that she had discussed the rental unit with the landlords in August of 2016, however the keys were not made available to her until September 2, 2016, and therefore she does not believe she should be paying for September 1, 2016 rent.

The tenant further testified that she disagrees that the landlord only came over at her request, and states that he was frequently there unrequested and she had a total loss of quiet enjoyment.

Analysis

It is my finding that the tenant has not met the burden of proving that this rental unit needed painting when she moved into the unit and therefore, since she agreed to allow the landlord to have a sleigh bed in exchange for having the unit painted, it is my decision she does not have the right to be compensated for that sleigh bed, or have that that returned.

It is also my decision that the tenant does not have the right to the return of one days rent for the month of September 2016. I accept the landlord's testimony that the tenant had agreed to rent this unit for the month of September 2016, and therefore, even if she did not move into the rental unit until September 2, 2016 she is still liable for the full rent for that month.

It is also my decision that the tenant has not met the burden of proving that she had a loss of quiet enjoyment of this rental unit, due to frequent uninvited visits from the

landlord. Further, it's my finding that the tenant is not met the burden of proving that the landlord ever removed any of her driftwood collection.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. In this case, it is, basically, just the applicant's word against that of the respondents, and the respondent's explanation of why they made frequent visits to the rental unit is as plausible as the applicant's claims.

Further, no one ever saw the landlord enter the tenants unit without permission, nor has anyone ever seen the landlord removed any of the tenants driftwood collection, and therefore, even the written statements are based on supposition.

Further, even if there had been an unsafe heater in the crawlspace of the rental property there is no evidence to show that it ever caused any loss of use or enjoyment for this tenant.

It is my decision therefore pursuant to section 62 of the Residential Tenancy Act that this application is dismissed in full, without leave to reapply.

Conclusion

This application has been dismissed in full, 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: July 26, 2017

Residential Tenancy Branch