



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, OLC, O, RPP, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested compensation for damage or loss under the Act, an order the landlord comply with the Act, an order the landlord return the tenants' personal property, an order the landlord return the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant confirmed that the personal property has been returned.

Issue(s) to be Decided

Must the landlord be ordered to compensate the tenant for damage or loss under the Act?

Must the landlord be ordered to return September 2017 rent and the security deposit to the tenant?

Must the landlord be ordered to comply with the Act?

Background and Evidence

This tenancy commenced on September 1, 2017 as a fixed term to August 31, 2018. Rent was \$550.00 due on the first day of each month. The landlord is holding a security deposit in the sum of \$275.00. The tenant supplied a copy of the tenancy agreement that the landlord had signed and given to the tenant. The tenant subsequently signed the agreement. A copy was provided to the landlord as part of the tenants' evidence submission.

The landlord lives in the upper portion of the home. The tenant rented a unit in the basement that had its' own bathroom and kitchen.

The tenant has made the following claim for compensation:

Return September 2017 rent and deposit	825.00
Living expense after being forced from rental unit	750.00
Theft	2,300.00
Compensation for harassment and for breaking the lease	1,100.00
TOTAL	\$4,975.00

The tenant took possession of the unit several days prior to September 1, 2017. By September 1, 2017 the relationship between the tenant and landlord had soured. The landlord said that tenant had told him that she hated the unit and wanted to move out. The landlord took this as notice to end the tenancy.

On September 1, 2017 the landlord issued notice of entry to show the unit to prospective tenants the next day. The tenant disputed the showing and told the landlord that entry would not be allowed. The tenant was away for the weekend and did not agree to the showing. The landlord confirmed that he proceeded to show the unit to 23 prospective tenants.

The tenant said that on September 2, 2017 the tenant told the landlord that she felt bullied and scared, so she would vacate on September 15, 2017. The landlord agreed.

On September 3, 2017, after the landlord had proceeded with the showing of the unit, the tenant discovered that \$2,300.00 was missing from the rental unit. The tenant contacted the police who came to the unit and spoke to the landlord. The landlord said he did not allow anyone who viewed the unit to be alone in the unit. The landlord said he does not need money and did not take any money. The landlord said he wondered why the tenant would leave that sum of money in the unit when the tenant knew the landlord was proceeding with showing the unit.

An incident occurred later on September 3, 2017. The tenant said she was in her vehicle across from the rental unit when the landlord and two friends approached her car. They took pictures of her licence plate. The tenant felt frightened and called the police again. When the police arrived they did not speak with the tenant. The landlord said that it was the police who told him to get a locksmith and change the lock to the tenants' unit. The landlord was told by police that if the tenant wanted her personal property the police would need to accompany the tenant.

The tenant supplied copies of emails sent between the parties. On August 25, 2017 the landlord had become upset as he believed the tenant had sublet the unit. The next day the tenant emailed the landlord saying it was not the best introduction but that all was now good.

By September 1, 2017 the landlord concluded that the unit should be rented to someone else. The landlord had rented to the tenant, as she was known to a friend of the landlord; however, the landlord decided the tenant was not best suited for the unit. At this point the landlord had the tenants' security deposit and first months' rent.

After the two police visits that occurred on September 3, 2017 the landlord changed the locks to the rental unit. When the tenant attempted to enter the unit on September 4, 2017 she could

not. The tenant and a friend came to the unit and the landlord admits he was hostile with the tenant. The landlord agreed to allow the tenant to remove the personal property.

The tenant supplied a copy of a letter dated September 23, 2017, written by a friend who states that the tenant paid \$750.00 per month to stay at the friend's residence. The tenant said she had nowhere else to reside. The tenant has claimed this cost.

The tenant said that the landlord bullied and harassed the tenant as the tenant had refused to sign a month-to-month lease that the landlord wanted signed. The tenant had signed a fixed term and did not wish to sign a month-to-month agreement. The tenant submitted that several incidents occurred in the backyard, on the tenant's way to school and when she returned home. The tenant said she and the landlord are both Chinese but the landlord used racial slurs against the tenant.

The tenant submits that the landlord harassed and bullied through face-to-face contact and via email. The tenant supplied copies of a number of emails, none of which the tenant identified as proof of harassment. The landlord had sent an email to the tenant in apology for losing his temper at one point. The tenant described some issues between the landlord and the previous occupant, who had recommended the tenant to the landlord.

During the hearing the landlord agreed to return the deposit and September rent to the tenant. The parties were informed that an order would be made in support of the landlords' agreement to return the funds to the tenant.

Analysis

Based on the agreement of the landlord I order the landlord, pursuant to section 63(2) and 67 of the Act, to return the security deposit in the sum of \$275.00 plus September rent paid in the sum of \$550.00. The landlord will send the funds to the tenants' service address indicated on the application.

It was very clear during the hearing that the relationship between the parties quickly and dramatically deteriorated. The landlord wanted the tenant out of the unit and the tenant indicated she would leave. While proper notice ending the tenancy was not given by the tenant I find that there was a meeting of the minds that the tenant would vacate by September 15, 2017.

In the absence of an order of possession, the landlord proceeded to change the locks to the rental unit on September 3, 2017. If the police told the landlord that the locks could be changed, they were mistaken. The landlord was required to either reach a mutual agreement to end the tenancy on that date or to issue a notice ending tenancy. A landlord may not unilaterally take possession of a rental unit. The tenant had paid rent and had the right to possess the rental unit.

I find that when the landlord decided to allow potential renters into the unit on September 2, 2017 the purpose of access was not reasonable, as required by section 29 of the Act. The landlord made arrangements to show the unit before the tenant agreed to vacate. It is not reasonable to show a unit to prospective tenants when notice to end the tenancy has not been issued. The tenant may have indicated she wished to leave, but until notice is provided by a

tenant the tenancy continues. Residential Tenancy Branch policy suggests that when a landlord changes the locks an application may be made to have the locks changed. The tenant chose not to do so.

Section 67 of the Act provides the authority to award damages resulting from a party not complying with the Act. Policy suggests that damage may arise from loss of access to any part of the residential property provided under a tenancy agreement and loss of quiet enjoyment. Compensation is meant to put the person who suffered the loss in the same position as if the damage or loss had not occurred. Compensation is not meant to be punitive.

From the evidence before me I find that when the landlord locked the tenant out of the rental unit the landlord caused the tenant an extreme amount of distress and denied the tenant the right to occupy the rental unit. The relationship between the parties may have been soured, but the landlord took steps that denied the tenant her legal right under the Residential Tenancy Act.

Therefore, I find that the tenant is entitled to compensation in the sum of \$750.00 as compensation for living expenses after the tenant was barred from the rental unit. This recognizes the costs the tenant would have incurred while she sought out other accommodation, beyond the sum of rent to be returned by the landlord.

If find, on the balance of probabilities, that the tenant has failed to prove the landlord or anyone under the landlords' control stole the \$2,300.00. The tenant could have been reasonably sure the landlord planned on proceeding with a showing of the unit and it is questionable as to why the tenant would choose to leave that sum of cash in the rental unit. The tenant suspects the landlord took the funds, but could offer no convincing proof that was the case. Therefore, I find that the claim for stolen money is dismissed.

In relation to the claim of compensation for harassment, while both parties describe a relationship that became toxic very quickly, I find, on the balance of probabilities that the tenant has failed to prove the landlord harassed the tenant. The emails supplied as evidence demonstrate disagreement on matters, but do not point to harassment. The landlord apologized for acting inappropriately on one occasion, but a single event does not support compensation. Compensation would normally flow from a period of prolonged behavior. Therefore, I find that the claim for harassment is dismissed.

Therefore, the tenant is entitled to compensation in the sum of \$1,575.00. The balance of the claim is dismissed.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenant is entitled to recover the \$100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary order in the sum of \$1,675.00. In the event that the landlord does not 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.

Conclusion

The tenant is entitled to compensation in the sum of \$1,575.00 which includes return of the security deposit. The balance of the claim is dismissed.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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: December 05, 2017

Residential Tenancy Branch