



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file. The tenant was provided an opportunity to present her case first. The tenant did not call her witness to testify at the time of her presenting her case. The landlord was subsequently provided with an opportunity to respond to the tenant's claim after which the tenant was afforded the opportunity of a final reply. After formally advising the parties that the hearing had concluded, the tenant's witness spoke up to state that she wished to provide her statement. As the hearing had already concluded and the tenant had the opportunity to call her witness when presenting her case, the witness statement was not allowed.

At the outset of the hearing, the landlord's representative advised that the landlord's name was misspelt in the application. The correct name is reflected in this decision.

Issues

Is the tenant entitled to monetary compensation for damage or loss including the return of a security deposit?

Background and Evidence

The parties entered into a written tenancy agreement on August 27, 2017. The tenancy began on September 16, 2017. The monthly rent as per the agreement was \$1500.00 per month plus 100% utilities. The tenant paid a security deposit of \$1000.00 at the start of the tenancy which the landlord continues to retain.

In a related decision dated November 15, 2017 (file# recorded on the cover page), the landlord was granted an order of possession as the tenant failed to pay October 2017 rent in the amount of \$1500.00 and awarded a monetary order in the amount of \$1600.00. In a decision dated November 21, 2017 the tenant's application seeking a review consideration of the November 15, 2017 decision was dismissed.

The tenant is claiming return of her security deposit and double the amount as the landlord failed to return it within 15 days of being provided a forwarding address. The tenant is also claiming an additional \$14,992.69 for various losses including loss of use, loss of quiet enjoyment, recovery of a portion of utilities bills, moving expenses, expensed related to the filing of this application, aggravated damages for becoming homeless, harassment and mental anguish.

The tenant testified that she answered the craigslist advertisement for the rental unit and travelled from Penticton B.C. to Kelowna B.C. to view the property. She signed the tenancy agreement on August 27, 2017 but when she came back to the property to begin her tenancy on September 16, 2017 she was surprised to see that no work had been done to the house as promised by the landlord. The tenant testified that on October 13, 2017 she sent a breach letter to the landlord identifying various things that needed to be repaired. The tenant submits that the landlord do a condition inspection report so she did one on her own. The tenant submits that the landlord wanted hugs from her for any work that he did on the property. The tenant submitted various pictures of junk kept on the property by the landlord. The tenant testified that the landlord was at the rental property constantly up to 5 days per week. The tenant submits the landlord was using the power from the rental unit which is why she is claiming recovery of utilities paid. The tenant submits the landlord ignored her breach letter and instead served her with an order of possession which she alleges he obtained by fraud. The tenant is claiming she was left homeless and stressed.

The landlord submits that in the decision dated November 15, 2017 he was granted a monetary order in the amount of \$1600.00 so the security deposit has been offset against this order.

The landlord testified that at the time of entering into the tenancy agreement, the parties had a verbal agreement that the North East section of the property would be for the landlord's use. The landlord testified that he even installed a fence to separate this area from the tenant's area. The landlord testified that he required this space for storage and to access the rental unit to perform maintenance and repair work that was required.

The landlord testified that a move-in inspection was not completed as the tenant said she was too tired on move-in date. The landlord testified that this hearing is the first time he seen or heard of the inspection report completed by the tenant herself. The landlord submits that it has likely been prepared after the fact.

The landlord submits that the tenant issued a breach letter on October 13, 2017 in lieu of paying rent for this month. The landlord testified the tenant was aware of the condition of the rental unit at the time of entering into the tenancy less than two months prior to the letter date. The landlord testified that the house is 55 years old and most of the house is original. The landlord testified he was on the property constantly at the tenant's requests to perform repair and maintenance work. The landlord testified that any interference with the tenant's enjoyment of the rental unit was only temporary. The landlord testified that he was on the property for approximately 20 hours during the first week of the tenancy replacing the AC unit and building a fence to separate the outside storage area. The landlord testified that there was no communication from the tenant during the period of September 26, 2017 to October 16, 2017 until the landlord attempted to collect the rent.

The landlord disputes the tenant's claim for re-imbursement of utilities and submits that the tenant did not even pay the utilities bill. The utilities were reverted to the landlord's name as the tenant failed to pay the bills.

The landlord submits that he legally obtained an order of possession as the tenant failed to pay rent so the landlord should not be responsible for moving costs.

The tenant replied that there was no verbal agreement for the landlord to use a portion of the outside property for storage. The tenant submits that the landlord had promised that this area would be cleaned up before she moved in.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may retain from a security deposit an amount for which the landlord has an order for payment which has not been paid.

The landlord was issued a monetary order on November 15, 2017 in the amount of \$1600.00 which remained unpaid at the end of the tenancy. The landlord was entitled to retain the tenant's full security deposit of \$1000.00. The tenant's application for return of the security deposit is dismissed without leave to reapply.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the tenant was aware of the condition of the rental unit at the time of entering into the tenancy agreement. The landlord is however still responsible to repair and maintain the rental unit in a state of decoration and repair. As evidenced by the submission of both parties, I find the landlord was meeting this obligation as he was on the property in order to perform required repair and maintenance. I find any disturbance caused to the tenant was just a temporary inconvenience. I also accept the landlord's testimony that the parties had a verbal agreement for the landlord to utilize a portion of the outside area for his own use. This is evidenced by the fact that the landlord was building a fence to separate this area from the tenant's area. The tenant's claims for compensation for loss of use and loss of quiet enjoyment are dismissed without leave to reapply.

In either event, I find even if the landlord was in breach of a material term of the tenancy agreement, the tenant did not provide the landlord with any opportunity to correct the breach. Instead the tenant withheld a rent payment days after issuing the breach letter to the landlord. The tenant should have paid her rent as required under the tenancy agreement and then could have filed an application requesting the landlord to correct any alleged breaches if the landlord failed to correct them within a reasonable time. Instead, as a result of the tenant withholding rent her tenancy was ordered ended. As the tenancy was ended due to the tenant's own failure to pay rent, the tenant's claims

for moving costs, aggravated damages for becoming homeless and mental anguish are dismissed without leave to reapply.

The tenant provided insufficient evidence of the claim for compensation for harassment and loss suffered due to the landlord constantly wanting hugs. This part of the tenant's claim is dismissed without leave to reapply.

The tenant's claim for reimbursement utilities is also dismissed without leave to reapply. The tenant provided no evidence that she even paid the utilities and insufficient evidence as to by how much the utilities bills were increased due to the landlord utilizing power to do repairs.

Conclusion

The tenant's application is dismissed in its entirety 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: October 9, 2018

Residential Tenancy Branch