



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord was accompanied by her partner as a support person who did not testify or take part in the hearing. The tenant was assisted by a Legal Advocate. The parties were given the opportunity to question each other and give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for return of rent money, moving expenses and damages to the tenant's vehicle?

Background and Evidence

The tenant testified that the parties entered into a tenancy agreement for a tenancy to begin on July 1, 2018 on a month-to-month basis. A copy of the agreement has been provided for this hearing, and it is dated June 11, 2018 and specifies rent in the amount of

\$800.00 per month payable on the 1st day of each month, and a security deposit in the amount of \$400.00 by June 25, 2018.

The landlord was residing in the rental unit, which is a manufactured home situated in a manufactured home park, and the landlord owns the manufactured home. The landlord was supposed to go to Alberta, which she finally did in mid-July but stayed with the tenant and her daughter, sleeping on the couch because the parties signed the tenancy agreement. The landlord was waiting for her boyfriend to arrive, and they were going to rent another manufactured home in the manufactured home park. However, they parted ways so the landlord wanted the rental manufactured home back. The tenant testified that she actually lived there prior to July 1, 2018 and for more than 1 month and gave the landlord 2 month's rent. The tenant would not have moved to the community in the Interior of British Columbia from Vancouver Island had it not been for this tenancy.

The landlord removed most of the tenant's personal items and left them on the deck in bags and changed the lock to the rental unit. The tenant kicked the door and it opened, and half of the tenant's belongings were still in there. The tenant grabbed what she could that belonged to her, but some stuff was still missing. The tenant attempted to contact the landlord but the landlord blocked her calls. There had been no prior conversation about the tenant moving out.

The tenant provided the landlord with a forwarding address in writing on the Amended Application for Dispute Resolution. The landlord has not returned any portion of the security deposit and has not served the tenant with an Application for Dispute Resolution claiming against the security deposit.

The tenant was pretty much on the street, but stayed with friends for a time and then at a motel. After the tenant had been locked out of the rental unit the tenant received by regular mail a Two Month Notice to End Tenancy for Landlord's Use of Property. A copy has been provided as evidence for this hearing and it is dated July 9, 2018 and contains an effective date of vacancy of September 30, 2018. The reason for issuing it states:

“The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse).”

During the tenancy, the tenant's vehicle was damaged by a landslide while the landlord was in Alberta, and the tenant claims \$151.20 for its repair.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totalling \$3,557.20:

- \$1,600.00 for reimbursement of 2 month's rent;
- \$800.00 for the security deposit;
- \$1,006.00 for moving costs; and
- \$151.20 for vehicle repair.

Receipts for the vehicle repair and moving expenses have been provided for this hearing. The receipt for moving expenses is dated August 30, 2018 for moving to the new rental unit, and the tenant has also provided a portion of a copy of a new tenancy agreement signed August 1, 2018 with a new landlord.

The landlord testified that this was a shared accommodation and she contacted the Residential Tenancy Branch who confirmed that the Residential Tenancy Branch has no jurisdiction. The landlord never moved out, but intended to by August 1, 2018, but that fell through. The tenancy agreement says the tenancy was to commence July 1, 2018 but that was a mistake on the landlord's part. The tenant wanted a lease in mid-June, so the agreement was made for the tenancy to commence July 1, 2018, but before that, the parties all knew that the landlord was not moving out until August 1, 2018 and the tenant's furniture would not arrive until then. The landlord didn't realize it would make that much difference if the landlord stayed in the rental unit for an extra month. The parties were friends and the date was meaningless. When the landlord and her boyfriend broke up, the landlord continued to live in the rental home.

The landlord further testified that the only money the tenant gave to the landlord was \$400.00 cash, and the landlord did not give a receipt. The tenant purchased an air conditioner which was supposed to be in exchange for July's rent.

The landlord disputes that the tenant paid 2 month's rent and testified that the tenant was only in the rental unit from June 12 till July 13, 2018; a total of 1 month.

The landlord asked the tenant to leave via text messaging while the tenant was away and the landlord was staying with the tenant's daughter in the rental home. The landlord knew by June 28, 2018 that the tenancy agreement wouldn't be effective. The parties texted back and forth and it got more heated. The landlord thought the parties would find another place for the tenant to live.

The landlord also testified that the Two Month Notice to End Tenancy for Landlord's Use of Property was mailed to the rental unit address because the tenant still had a mail key.

The landlord disputes the tenant's claims and testified that the Residential Tenancy Branch advised that the tenancy agreement wouldn't come into effect if the landlord hadn't moved out, and she hadn't moved out.

Analysis

Aside from the security deposit, the tenant seeks a monetary order for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement. In order to be successful, the onus is on the tenant to establish that the damage or loss exists; that the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement; the amount; and what efforts the tenant made to mitigate any damage or loss suffered. Further, the *Residential Tenancy Act* does not apply to tenancies wherein the tenant shares kitchen or bathroom facilities with the owner.

However, there is a difference and the intent of the parties is important.

In cases where the parties enter into a shared tenancy and create a tenancy agreement, even if that tenancy agreement specifies that the *Act* applies, if the intent of the parties is to have a co-tenancy relationship then the Residential Tenancy Branch has no jurisdiction respecting disputes that may arise out of that relationship. However, where the intent of the parties is to create a tenancy where the owner does not reside in the rental unit, the *Residential Tenancy Act* applies.

In this case, there is no question that the parties entered into a tenancy agreement in writing for a tenancy to commence on July 1, 2018. The landlord testified that the air conditioning unit purchased by the tenant represented rent for the month of July, 2018. I find that the parties entered into a contract for the tenant to rent the manufactured home and the landlord changed her mind. Even though the landlord's situation changed prior to the commencement date of the tenancy, the contract was still created, and cannot be "cancelled" without the consent of both parties.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property, and where a landlord does so, the landlord must pay to the tenant the equivalent of one month's rent as shown in the tenancy agreement, which I find is \$800.00. That is generally deemed to be the cost of moving, and I grant a monetary order in favour of the tenant in that amount.

I further find that the landlord moved the tenant out of the rental unit and changed the locks contrary to the law. I find that the inconvenience for the tenant and her child has resulted in a financial loss to the tenant. Further, given that the landlord ended the tenancy illegally

prior to the effective date of the Two Month Notice to End Tenancy for Landlord's Use of Property, I find that the tenant is entitled to the equivalent of 2 month's rent, or \$1,600.00.

With respect to the security deposit, the *Residential Tenancy Act* requires a landlord to return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

The landlord testified that she did not receive any rent money from the tenant, but the tenant paid \$400.00, and the landlord took that as a rent payment but didn't say when it was collected. The tenant testified that the \$400.00 security deposit was paid in cash prior to the start of the tenancy, but the tenant did not get a receipt from the landlord. The tenant also testified that she paid rent in the amount of \$800.00 twice, but that is disputed by the landlord and there is no supporting evidence. Where a landlord accepts cash for any reason from a tenant, the landlord must provide the tenant with a receipt. In the circumstances, I am satisfied that the \$400.00 collected by the landlord was a security deposit, consistent with the amount of security deposit required on the tenancy agreement.

The landlord testified that the tenant moved out on or about July 13, 2018 and the tenant was not able to provide any testimony in that regard. The tenant testified that the landlord received the tenant's current address on the Amended Application for Dispute Resolution. Where a tenant doesn't provide the landlord with a forwarding address within a year after the tenancy ends, the landlord doesn't have to return the security deposit, however where the forwarding address of the tenant is provided on an Application for Dispute Resolution, that means that the 15 day period starts from the day of the hearing of that application. In this case, the 15 day period starts today, December 11, 2018. The landlord has the tenant's forwarding address in writing, and in the event that the landlord fails to return the \$400.00 security deposit or make an application against it, the tenant will be at liberty to apply for double. I dismiss the tenant's application for a monetary order for return of the \$400.00 security deposit, with leave to reapply.

With respect to the vehicle repair, the tenant testified that the damage was caused by a landslide, and therefore I am not satisfied that the tenant has established that the damage is a result of the landlord's failure to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the claim.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,400.00.

The tenant's application for a monetary order for return of the security deposit is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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: December 11, 2018

Residential Tenancy Branch