

Decision

Dispute Codes:

OPR; MNR; FF

Introduction

This is the Landlords' application for an Order of Possession; a Monetary Order for unpaid rent and loss of rent; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the parties prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Preliminary Matter

At the onset of the Hearing, it was determined that the Landlords no longer required an Order of Possession, as the Tenant is no longer living at the rental unit. The Landlords' application for an Order of Possession is dismissed without leave to reapply.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The rental unit is located in a house, with a suite on the upper floor and a suite on the lower floor. The upper floor rents for \$1,200.00 per month. The lower floor rents for \$1,100.00 per month.

The Tenant gave the following testimony and evidence:

The Tenant saw an advertisement for the rental unit and applied for tenancy of the upper unit of the rental property, sight unseen, and paid a security deposit in the amount of \$600.00 on August 31, 2009, by direct deposit into the Landlords' bank account. The Tenant moved from Ontario and arrived at the rental property late in the evening of

September 2, 2009. The upper suite was not ready for occupancy and the lower suite was available, so the Landlords told her she could stay in the lower suite temporarily until the upper suite was ready. The Landlords said it would be ready in a couple of days. In the meantime, the Landlords told the Tenant that she could stay in the lower suite as their guest and pay a pro-rated amount of rent for September when the upper suite was ready for occupancy.

The female Landlord showed the lower suite to a few prospective tenants while the Tenant was staying there. The Landlord did not give her 24 hours notice, but would just show up on the Tenant's doorstep with the prospective tenants.

On September 8, 2009, the female Landlord and the Tenant did an inspection of the upper suite and the Tenant gave the Landlord 12 post dated cheques and signed a one-year lease. The Landlord did not give the Tenant any keys for the upper suite because it was still not ready for the Tenant to move in.

On September 15, 2009, the Landlords provided the Tenant with a key to the upper suite in order that she could have a telephone installed. The phone was installed on September 17, 2009, but the suite was still not ready for occupancy.

On September 23, 2009, the female Landlord informed the Tenant that her rent cheque for September had bounced. The Tenant was alarmed that the Landlord had attempted to cash September's rent cheque, as she had not yet moved into the upper suite because it was not ready.

On September 24, 2009, the Landlords issued a Notice to End Tenancy for Unpaid Rent. On September 25, 2009, the Landlords gave her a letter stating that the upper suite was now ready for occupancy. The Tenant provided a copy of the letter in evidence.

The Landlord was still installing blinds and working on the outside deck on October 27, 2009.

The Landlords gave the following testimony and evidence:

The Landlords did not say that the Tenant could stay in the lower suite rent-free until the upper suite was available. There were damages to the upper suite that had to be fixed, including a broken front door window; painting; a damaged ceiling; broken tiles and blinds; a broken dishwasher; and the deck was only half-painted. The Tenant could have moved in upstairs and moved her furniture into the middle of the room to facilitate painting and ceiling repair.

The upper suite was ready for occupancy on September 15, 2009. The Landlords told the Tenant that she could have the upper suite for \$1,150.00 a month for the first three months of the lease.

The Landlords could not rent the suite out until December 1, 2009. The Landlords advertised the upper suite for rent on Craigslist, at SFU, and in BC Rent.

The Landlords requested a monetary order for damages, as follows:

Unpaid rent for September, 2009 (lower suite)	\$1,100.00
Electricity and gas bills	\$133.06
Loss of rent for October, 2009	\$1,150.00
Loss of rent for November, 2009	<u>\$1,150.00</u>
TOTAL AMOUNT CLAIMED	\$3,533.06

Analysis

In their Application for Dispute Resolution, the Landlords identified the Dispute Address as the lower suite. In the Application for Tenancy and the Lease agreement provided, the rental unit is identified as the upper suite. Therefore, I have amended the Landlord's Application to reflect the correct address for the Dispute Address.

Based on the testimony of both parties and the documentation provided, I am satisfied that the Tenant contracted with the Landlords to rent the upper suite. I am satisfied that

the upper suite was not ready for occupancy on September 2, 2009, and that the Tenant did not take possession of the upper suite.

The Landlords provided no documentary evidence to support their claim that they had attempted to mitigate their loss by attempting to re-rent the upper suite. Furthermore, I find that the Landlords breached the tenancy agreement in failing to provide the Tenant with the upper suite for the date agreed upon. Therefore, the Landlords' application for loss of rent for the months of October and November is dismissed without leave to reapply.

In the case of verbal agreements between parties, when verbal terms are clear and when both the Landlords and Tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. One party must carry the added burden of proof. The Applicants, in this case the Landlords, have the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

For this reason, I am not prepared to interpret whether either party fulfilled the agreed-upon terms with respect to the verbal agreement between the parties regarding the lower suite, and I dismiss the Landlord's application for unpaid rent and utilities for the month of September, 2009.

The Landlords have not been successful in their application and are not entitled to recover the cost of the filing fee from the Tenant.

The Tenant paid a security deposit in the amount of \$600.00. I hereby provide the Tenant with a monetary order in that amount.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of \$600.00 against the Landlords. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: November 23, 2009