



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement and order requiring the landlord to comply with the Act.

The tenant and landlord's agent appeared and the hearing process was explained to the parties. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, to make submissions to me and respond each to the other.

Issue(s) to be Decided

Have the landlords breached the Act or tenancy agreement, entitling the tenants to a monetary order for money owed or compensation for damage or loss?

Have the tenants established an entitlement to receive an order requiring the landlord to comply with the Act?

Background and Evidence

The tenant submitted evidence of a tenancy agreement signed by the attending parties. According to the terms of the tenancy agreement, the tenancy was to start on August 1, 2011, for a fixed term of one year, ending on July 31, 2012, monthly rent was to be \$675.00, payable on the first day of the month. The tenant was not required to pay a security deposit.

The tenant submitted evidence of a letter, dated July 23, 2011, from the landlord's agent to the tenant, which informed the tenant that the repairs had not been completed and that the tenant could not move into the rental unit. The letter further informed the tenant that the tenant should look for other accommodations.

The tenant stated that she had been in contact with the landlord's agent since agreeing to the terms of the tenancy on June 22, 2011, and had been assured on multiple occasions that the repairs would be completed. The tenant stated that she was to receive the keys on July 18, 2011, but instead received them on July 21, 2011, and was granted permission to start moving her belongings into the rental unit.

The tenant stated that she received the landlord's letter on July 24, 2011, and had 6 days to find another place to live. The tenant submitted that she was able to find alternate accommodations starting August 1, 2011, but that particular rental unit was not wheelchair accessible and had to be re-painted. Due to this, the tenant stated she had to leave her belongings in storage for 2 weeks into August.

The tenant's monetary claim is \$450.00, and the tenant submitted a receipt which indicated her storage costs were \$400.00.

In response the landlord's agent stated she attended the rental unit on July 22, 2011, and discovered that the repairs were too significant to have the unit ready for occupancy by August 1, 2011. The landlord's agent submitted that they were too concerned about the tenant's health to allow occupancy and that the landlord would then have been in violation of the Residential Tenancy Act should occupancy begin.

The landlord's agent submitted that the tenant found other rental accommodations on August 1, 2011.

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by

taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenant to prove damage or loss.

I find the landlord and the tenant entered into a valid, enforceable tenancy agreement and that the landlord was responsible for providing the rental unit on August 1, 2011, according to the terms of the tenancy agreement, but failed to do so.

I therefore find that the landlord violated section 44 of the Residential Tenancy Act by illegally ending this tenancy in ways not allowed under this section.

I therefore find that this tenancy has ended due to the tenancy agreement being frustrated, pursuant to section 44 (e) of the Act.

As I find the tenancy agreement frustrated due the landlord's breach of the Act in not providing the rental unit as agreed upon, I find the tenant is entitled to costs incurred.

The tenant has submitted proof that she incurred a loss and I therefore find that she has established a **monetary claim** in the amount of **\$400.00** as shown by her receipt.

As the tenants have found alternate accommodations, I dismiss their claim for an order requiring the landlord to comply with the Act.

Conclusion

I grant the tenants a monetary order in the amount of \$400.00. This order is a final, legally binding order, and may be filed in the Provincial Court of British Columbia (Small Claims) should the landlords fail to comply with the Order.

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 01, 2011.

Residential Tenancy Branch