Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, damage to the rental unit and to recover the filing fee from the tenant 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 included evidence and testimony provided.

Preliminary Matters

The landlord submitted several colour photographs to the Residential Tenancy Branch (RTB); black and white copies were given to the tenant. The landlord said the tenant has previously had coloured copies. As the tenant was not given copies of photographs, identical to those provided to the RTB; those photographs were set aside. The landlord was at liberty to make oral submissions in relation to the photos.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $5,595.00 for damage and damage or loss under the Act?

Background and Evidence

The tenancy commenced in September 2013, rent in the sum of $750.00 was paid.

The landlord said that the tenant was sharing the unit with the landlord’s daughter, who is a co-owner of the unit. The landlord said this was not a tenancy.

The tenant supplied a copy of a decision issued on June 11, 2014 (file 252179). The arbitrator considered jurisdiction and found that jurisdiction applied to the tenancy. The landlord was ordered to return double the security deposit to the tenant.

The landlord applied for review consideration and that application was dismissed. The landlord has not submitted an application for judicial review.

The tenancy ended effective November 30, 2013, by mutual agreement signed on October 30, 2014. A copy of the agreement was supplied by the tenant.

Condition inspection reports were not completed.

The landlord's daughter wrote a May 5, 2014 letter indicating the tenant was a roommate of hers. A copy of the letter was supplied as evidence. The daughter states she moved to Vancouver in the summer of 2013 and could no longer live in the unit. She then wanted the tenant to vacate the unit, so the landlord could comply with the strata rules regarding rentals. The daughter states that she did not find out her belongings had been moved until after the tenant had vacated the unit. The daughter found her furniture damaged, some glasses were cracked and picture frames were damaged.

The landlord has made the following claim:

Damage to furniture	$800.00
Loss of use of bedroom July – November 2013	3,100.00
Loss of access to the unit during November, resulting in December loss of rent	1,495.00
Stress and anxiety caused by tenant's irrational behaviour and antics	200.00
TOTAL	$5,595.00

The landlord said that her daughter had a bedroom in the unit and would come and go from the unit. The tenant removed the furniture from the daughter's bedroom and as a result caused damage to a bed, plates, ornaments and a table. The screws to the furniture are missing. The landlord said her daughter saw this furniture was missing in July; so she went to stay with her mother. The room was rendered unusable by the tenant. The landlord could not say when they spoke to the tenant about the furniture or describe any attempts made to retrieve the furniture during the tenancy. The landlord said the tenant would not vacate the unit and she had to hire a lawyer.

The tenant denied the landlord's agent access to the unit, resulting in a loss of December 2013 rent. The landlord was away at the time and even though a notice of entry was put on the door, the tenant denied access. The landlord could not say when notice was provided or on what dates entry was denied.

The landlord submitted a claim for loss of quiet enjoyment in the form of stress. I explained that a landlord does not have a right to quiet enjoyment; that the remedy is to evict a tenant for cause. Therefore, the claim for stress was dismissed.

The landlord submitted a copy of the tenant's evidence used in the previous hearing. The tenant had said that she had been told she could not rent out the 2nd bedroom, which was fine, as she planned on using it as an office. The tenant was also asked to leave a few furnishings in the suite, to give the appearance to the strata president,

should he enter the suite, that the landlord's daughter was living in the unit. Entry by the strata president occurred several times during the tenancy

The tenant said that she never met the landlord's daughter. She moved into the unit and did use the 2nd bedroom; where she kept her computer. At the end of October she did move a desk, chair, bed, table and some knickknacks into the unit storage locker. No damage was done to any item. No one was using the furniture and no one came to the unit other than realtors who were showing the unit, as it was for sale until September 2013.

The tenant did deny access to the unit on one occasion in October 2013. The landlord wanted to show the unit to prospective tenants on October 16, 17, 18, 2013, but there had been no agreement reached ending the tenancy and no Notice ending tenancy had been issued. The tenant supplied a copy of the notice of entry.

An October 28, 2014 email to the landlord's lawyer from the tenant, stated that the landlord could find the belongings in her storage locker and that once an agreement to end the tenancy was signed the unit could be shown to prospective tenants. The tenant explained she had refused showing of the unit as the tenancy had not been ended. On October 30, 2013 the parties signed a mutual agreement, ending the tenancy.

The landlord had hired a property manager who, when contacted, had referred the tenant to a lawyer. The tenant said that at no time in November was any request made to show the unit and that she did not deny access in that month.

The tenant submitted that any stress experienced by the landlord was a result of her lack of knowledge of the Residential Tenancy Act.

Several times during the hearing the landlord had to be reminded not to interrupt the tenant while she was making her submissions. The landlord was also reminded on several occasions that only testimony relevant to the claim was necessary.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have considered the credibility of the parties; in particular the contradiction between the landlord's statement that they were aware the furniture had been removed in July; compared to the daughter's written statement indicating they became aware of this after the tenant vacated in November, 2013. In the circumstances before me, I find the version of events provided by the tenant to be highly probable. Considered in its totality, I favoured the evidence of the tenant over the landlord.

I find it is likely, on the balance of probabilities that the daughter never stayed in the unit with the tenant, as, by the daughter's own submission she had to move to Vancouver after losing her job in the summer of 2013. There was no evidence access was denied by the tenant, as the daughter did not even know furniture had been moved until after

the tenant vacated at the end of November. 2013. Therefore, I find that the claim for loss of use frivolous; it is dismissed.

The landlord supplied no evidence verifying any loss related to furnishing or belongings. No estimates for repair or receipts or invoices were supplied. Further, the inconsistency between the landlord's submission and her daughter's letter caused me to question the veracity of the claim. Therefore, in the absence of any verification of the loss claimed for damage to furniture, I find that the claim is dismissed.

The parties reached a mutual agreement ending the tenancy effective November 30, 2014. The landlord supplied no evidence setting out dates notices of entry were given in November and dates the tenant denied entry in November. There was an absence of any evidence supporting the claim the tenant denied access for showings during November 2013. Further, the landlord's daughter had confirmed she was living in Vancouver and that since she could not live in the unit, according to strata rules, it could not be rented. This could explain why no requests were made to show the unit during November. Therefore, I find, in the absence of any evidence supporting the claim for loss of rent revenue, that the claim is dismissed.

Conclusion

The claim is dismissed.

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: October 27, 2014

Residential Tenancy Branch