



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the Tenant for compensation pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that he did not receive the Tenant’s application until April 13, 2017. The Landlord states that the property manager for the Tenant’s building has been away on holidays for the past week and has the pertinent evidence of which there is none. The Landlord seeks to have the application dismissed or seeks an adjournment. The Landlord states that he is the supervisor of the person who would otherwise attend the hearing. The Tenant states that she sent the documents to the Landlord on 4 different occasions, the first by registered mail in November 2016.

The Act does not provide any penalty or consequence for the late service of an application for dispute resolution. Even if the Landlord received the materials when stated, as the Landlord is the supervisor of the person who left on vacation and as the Landlord had at least three weeks after receiving the application, I find that the Landlord had sufficient time to obtain whatever evidence the employee might have had and I note that the Landlord has already indicated they have none. It would therefore not make

any difference if the matter was adjourned. I therefore decline to either dismiss the application or adjourn the hearing.

The Tenant states that it provided a witness letter as evidence and provided this to both the Landlord and the Residential tenancy Branch (the "RTB"). It is noted that the RTB does not have a copy of this letter. The Landlord states that although it has a copy of a handwritten note, it is not legible and the Landlord has no idea what it says.

Rule 2.5 of the RTB Rules of Procedure provides that an applicant must provide a copy of any evidence that it wishes to rely on at the providing to both the Landlord and the RTB. As the Landlord was unable to read the witness letter and as no copy of the letter is present for the hearing I decline to consider this letter. I will however allow the Tenant to give oral evidence of this letter.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Background and Evidence

The tenancy started in October 2014 and ended on May 30, 2016.

The Tenant states that on one occasion during the last two weeks of the tenancy another tenant entered her unit with his own key. This tenant provided the witness letter noted above and the Tenant states that the letter confirms that he was able to use his own key to gain entry to the Tenant's unit. The Tenant states that the other tenant was apologetic and never entered the Tenant's unit again. The Tenant states that this was reported to the management but that she was told such entry was impossible and nothing was done. The Tenant states that no other entries occurred and nothing was ever taken from the unit. The Tenant states that this entry caused the Tenant anxiety and panic attacks. The Tenant states that she saw a physician about this. The Tenant did not provide any supporting medical evidence. The Tenant claims the equivalent of one half the rents for a month.

The Landlord states that they have no record of this incident being reported. The Landlord states that there was no opportunity to change any locks.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Although the Tenant may have had an unwanted entry into her unit, given the lack of supporting evidence that the Landlord was informed, such as complaint in writing or a witness statement of an oral complaint, I accept the Landlord's equally plausible evidence that they were never informed. As a result I find that the Tenant has failed to substantiate that she took steps to mitigate any losses from further entries and I note that none occurred. I therefore dismiss the application.

Conclusion

The application is dismissed.

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: May 08, 2017

Residential Tenancy Branch