



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNR, MNSD, FF, MNDC, O

Introduction

This matter dealt with an application by both the landlord and the tenants. The landlord seeks a monetary order for unpaid rent and an order to retain all or part of the security deposit in satisfaction of any order. The tenants seek a monetary order for loss of quiet enjoyment related to the conduct of the landlord and the manner in which the tenancy was ended, as well an order for return of the security deposit. Both parties also seek to recover the filing fee for the cost of their applications.

Both parties appeared at the hearing which was held via teleconference and were afforded a full opportunity to present oral evidence. I also advised both parties that I would consider their oral evidence as well as any written submissions which had been received prior to the hearing, in reaching my decision.

Issue(s) to be Decided

Is either the landlord or the tenant entitled to a monetary order, and if so in what amount?

Is the landlord entitled to retain any or all of the security deposit or is the tenant entitled to a return of the security deposit?

Have the tenants suffered a loss of quiet enjoyment and if so is it significant enough to require monetary compensation?

Background and Evidence

The landlord and the tenant's evidence agree on the following points:

- the tenancy commenced on April 15, 2008
- the rent was payable on the first of the month in the amount of \$1000.00
- a security deposit was paid in the amount of \$500.00
- that the tenants were late in paying rent on three occasions
- that on or about July 17, 2008 there was a minor collision in the driveway of the rental property where the landlord's vehicle struck the parked vehicle of one of the tenants.
- that this accident was reported to ICBC by the tenant on or before August 1, 2008
- that on August 27, 2008 the landlord verbally advised the male tenant that he was going to evict the tenants
- that on August 28, 2008 the landlord gave the tenants a typed notice of eviction citing repeated late payment of rent and unreasonable number of occupants in the rental unit. The notice gave the tenants 60 days to vacate.
- that on August 29, 2008 the landlord gave the tenants a One Month Notice to End Tenancy for Cause on the prescribed form, citing the same reasons as those on the typed form.
- that the tenants vacated the rental unit on August 31, 2008
- that on or about the 1st of September that the tenants came back to the rental unit and did further cleaning of the unit.

The evidence of the landlord at the hearing is that the issuance of the notice to end tenancy was in no way connected to the ICBC claim related to the motor vehicle accident. The landlord stated that the rent had been late on August 5, 2008 and on two previous occasions and it was only in late August that he realized he could evict the tenants for late payments.

The landlord has claimed that the tenants vacated the property prior to the effective date of the notice, which was October 1, 2008 and did not pay the rent for the month of September. The landlord seeks an order for the \$1000.00 rent and seeks to retain the security deposit as part of that order.

The landlord's evidence is that he re-rented the unit for October 1, 2008 and that he had advertised the unit as being available for October 1, 2008. The landlord was unable to provide a date of when he had advertised the unit for rent. The landlord at the hearing also stated that he had to do additional cleaning and that the carpet was stained. The landlord has not in his application made reference to a claim for stained carpets, nor did he present any evidence at the hearing related to that claim.

The tenants' evidence is that the eviction notices by the landlord were motivated by the tenant pursuing a claim for the minor motor vehicle accident. As the tenant did not contest that notice and vacated the property, I can not consider the merits of the notice. The tenants allege that their early vacating of the property was necessary due to the conduct of the landlord over the previous thirty day period.

The tenants' evidence is that on the date of the vehicle incident that the landlord became verbally irate in the driveway and stated loudly that he was going to evict the tenants. The tenants' further state that on or about the end of August that the landlord video taped one of the tenants and a friend in the driveway and would not respond to the tenants when asked to stop and asked to explain what he was doing. The tenants' also state that on August 27, 2008 that the landlord verbally abused them and stated that he was going to evict the tenants immediately and sue them. One of the tenants stated that she felt very intimidated by the landlord's behaviour and that she could often hear him yelling upstairs. The tenants' evidence is that they felt they had to vacate early to avoid further threats of action and verbal confrontations with the landlord.

The landlord's evidence is that the video taping incident was to show the parking situation in the driveway, although the evidence is that there was only one car in the driveway at the time. The landlord at the hearing did not explain why he did not explain that to or respond to the tenants at the time.

Analysis

In hearing the evidence of the both parties, there is no doubt that this was a tenancy that came into conflict after the minor vehicle incident of July 2008. Prior to that, there is no indication of conflict even though there may have been several late rent payments. There is no evidence that the landlord took exception to those late payments and if he did he failed to convey that to the tenants. In reaching my decision I find that I prefer the evidence of the tenants and that of the statements from other witnesses they have provided.

In regards to the landlord's claim, I find that the tenants did fail to pay rent for the month of September 2008 in the amount of \$1000.00. The landlord's evidence is that he re-rented the unit for October 1, 2008 and that it was advertised as being available for that date. The landlord was unable to testify as to when he advertised the unit. The landlord has an obligation in seeking a monetary claim to clearly demonstrate that he has taken all measures to mitigate any loss of revenue. This would include advertising the unit immediately and also that the advertising offer an immediate availability for possession. I find that the landlord has failed to show that he took measures to mitigate the loss and as such I find he is entitled only to loss of revenue for one half of the month.

I find that the landlord's assertion that he should retain the damage deposit for carpet stains to be unproven and I dismiss that part of his claim.

In relation to the claims by the tenants, I find that their premature vacating of the rental unit may have indeed been motivated by the behaviour of the landlord. It is a difficult situation when the landlord and tenant share the same physical building and the driveway. There is little chance to avoid contact once a conflict situation has been established. The tenants also state that the verbal comments, threats of lawsuits and evictions and video taping contributed to a "loss of quiet enjoyment". While the tenant's may have found this situation unbearable, I find that the amount of their claim to be excessive given the short duration of events, namely several weeks. It may have indeed resulted in disruption to their lives in having to relocate but they have not shown that it was worthy of the amount of compensation they seek. I find that the tenants did suffer a

short period of loss of quiet enjoyment through the actions of the landlord due to his verbal threats of eviction and lawsuits and his video taping of the tenant and find that they should be compensated.

Conclusion

In relation to the landlords claim _____ I award the landlord the amount of \$500.00 for loss of revenue for September 2008. The landlord currently holds a security deposit plus interest valued at \$503.91, and may retain that amount leaving a balance owing to the tenants of \$3.91.

In regards to the tenants' claim _____, I find that the tenants are entitled to compensation for loss of quiet enjoyment in the amount of \$250.00.

I find that each party is to bear the cost of their applications in this matter, and make no awards.

I order that the landlord pay the tenants the amount of \$253.91, forthwith. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: October 22, 2008