

DECISION

Dispute Codes: MNR, FF, CNC, CNR, MNDC, OLC, RP, PSF

Introduction

This hearing dealt with a cross applications by the parties. The landlords applied for a monetary order for money owed. The tenants applied to cancel the notice to end tenancy for cause and for a monetary order for compensation under the tenancy agreement.

The tenants withdrew their application for an order for the landlords to make repairs and to provide facilities agreed upon in the tenancy agreement. I therefore dismiss the tenants' application for such an order.

Issues to be Decided

1. Whether the notice to end tenancy for cause should be cancelled?
2. Whether the landlords are entitled to a monetary order for money owed?
3. Whether the tenants are entitled to a monetary order for compensation under the tenancy agreement?

Background and Evidence

On June 13, 2008, the landlords collected a security deposit in the amount of \$750.00 from the tenants. The tenancy began on July 1, 2008. A monthly rent in the amount of \$1500.00 is payable in advance on the first day of each month.

On November 3, 2008, the landlords served the tenants with a notice to end tenancy for unpaid rent. On November 17, the tenants paid the outstanding rent. On February 6, 2009, the landlords again served the tenants with a notice to end tenancy for unpaid rent by leaving the notice in the tenants' mail box. This notice

is therefore deemed served to the tenants on February 9. The tenants paid the outstanding rent on February 12.

On February 6, the landlords also served the tenants with a notice to end tenancy for cause on the grounds that the tenants were repeatedly late in paying rent.

Analysis

Issue #1 – Whether the notice to end tenancy for cause should be cancelled?

The landlords said that the tenants were late in paying rent in these months. On August 31, 2008, the tenants paid the September rent in the amount of \$963.99. The tenants still have not paid the balance. The tenants paid the October 2008 rent on October 3; the November 2008 rent on November 7; and the December 2008 rent on December 2. On January 3, 2009 the tenants paid the January rent in the amount of \$1369.95. The tenants still have not paid the balance. The tenants paid the February 2009 rent on February 12.

The tenants did not dispute that they were late in paying rent in November 2008 and February 2009 and that they were served with the notice to end tenancy for unpaid rent during these month. The tenants also did not dispute that in September 2008 and January 2009, they paid only partial rent and have not yet paid the balance.

Based on the above, I find that the landlords have established grounds to end this tenancy. I therefore dismiss the tenants' application to cancel the notice to end tenancy for cause. During the hearing, the landlords requested an order of possession. Based on the above facts, I find that the landlords are entitled to an order of possession. The tenants must be served with the order of possession.

Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Issue #2 – Whether the landlords are entitled to a monetary order for money owed?

The tenants deducted \$536.01 from the September 2008 rent. The landlords submitted an invoice and receipts from the tenants showing that the tenants had paid \$78.75 for bee nest removal; \$441.26 for fireplace repair; and \$16.00 for garbage removal. The landlords said that they were never contacted by the tenants regarding these repairs.

The tenants said that removal of the bee nest was an emergency repair. Section 33 of the *Residential Tenancy Act* states that the tenants' reimbursement for emergency repairs is predicated on these two conditions being met: the tenants 1) must make at least two attempts to notify the landlords of the problem; and 2) to allow the landlords reasonable time to make the repairs before making the repairs themselves. In this case, the tenants said that they phoned the landlords once on August 19 but could not get a hold of them. Thereafter, they proceeded to instruct a pest control company to remove the bee nest. Based on the above, I find that the tenants are not entitled to any reimbursement for removal of the bee nest in the amount of \$78.75. I therefore allow the landlords' claim for this amount.

With respect to the fireplace repair, the tenants gave the following evidence. The tenancy agreement includes the use of the fireplace whereas the fireplace fan was not working. The landlords did not repair the fireplace fan despite their requests on three occasions. Thereafter, the tenants proceeded to instruct a heating company to complete the repair. Regarding the landlords' refusal to conduct the necessary repairs, the Residential Tenancy Regulations #8 requires the tenants to make an application for dispute resolution to seek an order for the

completion of the repair. In this case, the tenants did not do so. The tenants are therefore not entitled to reimbursements for repair of the fireplace fan in the amount of \$441.26. Accordingly, I allow the landlords' claim for this amount.

The tenants said that they asked the landlords to remove the garbage left behind by the previous tenants and the female landlord said "sure". So they provided the landlords with the receipt. The tenants were unspecific as to whether the landlords had agreed to remove the garbage themselves or authorized the tenants to remove garbage and reimburse them for the costs. Based on the above, I find that the tenants have not proven that the landlords had agreed to the tenants removing the garbage and reimbursing them for the costs. I therefore allow the landlords' claim for the costs of garbage removal in the amount of \$16.00.

The tenants also deducted \$130.05 from the January 2009 rent. The landlords submitted an invoice from the tenants showing that they had paid \$121.08 for de-icing materials and \$8.97 for furnace filters. The tenants did not submit a receipt for the \$121.08 and agreed to pay back the landlords this amount. The landlords said that they did authorize the tenants to purchase the furnace filters and therefore withdrew their claim for the amount of \$8.97. Based on the above, I allow the landlords' claim for \$121.08 and dismiss their claim for \$8.97.

Based on all of the above, I find that the landlords are entitled to recovery of \$657.09 in unpaid rent. The landlords are also entitled to recovery of the \$50.00 filing fee. I grant the landlords an order under section 67 for the balance due of \$707.09. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Issue #3 – Whether the tenants are entitled to a monetary order for compensation under the tenancy agreement?

The parties did not dispute that the tenancy agreement includes the use of the gas fireplace. The tenants said that since September 2008, the landlords had

shut off the gas. So, they have been unable to use the fireplace. They are claiming for compensation for their inability to use the fireplace from September 2008 to March 2009. The landlords explained that on September 27, 2008, an installer was replacing furnace. At that time, the landlords asked the male tenant if they could turn off the gas. The male tenant agreed so they turned off the gas. On November 2, the landlords were at the property and smelled gas. The next day, they asked a gas fitter to investigate. The gas fitter told them that the gas valve had been tampered with. As a result, gas had actually been available at the house while a small amount of gas was leaking from the tampered gas valve. The gas fitter also warned that further tampering would cause more gas leakage. The landlords became concerned with the health and safety of all of the occupants in the house and therefore cut off the gas to the house. The tenants did not dispute the landlords' explanation. I have therefore accepted the landlords' explanation. Based on the above, I find that on September 27, 2008, the tenants had agreed for the landlords to shut off the gas to the fireplace. Furthermore, no evidence was adduced to indicate that the tenants had made a request to the landlords to turn the gas back on. Accordingly, I find that the tenants are not entitled to any compensation for their inability to use the fireplace from September 2008 to March 2009.

The tenants said that approximately one month ago, their oven failed to work. They notified the landlords who did not complete the repair until 3 ½ weeks later. The tenants added that during this time, the landlords cancelled their appointments with the repair company 3 or 4 times. The tenants are seeking compensation for their inability to use the oven for this period of time. The landlords said that on January 18, the tenants informed them that their oven was not working. They then called a repair company. When they phoned the tenants back to make an appointment, the male tenant threatened them by saying, "there will be 4 or 5 people waiting for you". The landlords alerted the repair company of potential difficulties they might face at the tenants' house. The repair company declined to go to the tenants' house. Eventually, the tenants agreed to leave the house when the repair was being conducted and the landlords found another

company to complete the repair. The tenants did not dispute the landlords' explanation as stated above. I have therefore accepted the landlords' explanation and I find that the delay in repairing the oven was caused by threats made by the tenants. The tenants are therefore not entitled to compensation for their inability to use the oven for 3 ½ weeks.

Based on above, I dismiss the tenant's claim for compensation under the tenancy agreement.

Dated March 24, 2009.