



Dispute Resolution Services

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

Decision

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for a monetary order as compensation for advertising and loss of rental income, an order providing for the retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee; 2) from the tenant for return of the security deposit and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the landlord is entitled to a monetary order under the Act
- Whether the tenant is entitled to return of the security deposit

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on January 1, 2009. Rent in the amount of \$650.00 was payable in advance on the first day of each month, and a security deposit of \$325.00 was collected on December 2, 2008. By way of mutual agreement, the tenant moved into the unit early on December 27, 2008. By letter dated December 31, 2008, the tenant informed the landlord of his decision to vacate the unit that same day. In his letter the tenant set out reasons for his decision to vacate the unit and states, in part, that “the premises were unsuitable pertaining to my quiet enjoyment, immediate health concerns, and unsatisfactory living conditions.” The tenant seeks return of his security deposit and recovery of the filing fee.

Following the tenant's departure, the landlord advertised the unit. She confirmed that she found new renters for the unit effective February 1, 2009. The landlord seeks a monetary order as compensation for loss of rental income for January 2009, in addition to the cost of advertising the unit in the amount of \$44.63, and the filing fee.

Analysis

Section 44 of the Act broadly addresses **How a tenancy ends**, and states in part:

44(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

Section 45 of the Act speaks to **Tenant's notice**. In particular, section 45(1)(a)(b) states:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the documentary evidence and testimony of the parties, I find that the tenant's notice to end tenancy failed to comply with the above statutory provision. Further, I find that while the landlord made attempts to mitigate the loss of rental income by advertising the unit, the unit remained vacant all of January and new renters were not found until February 1, 2009.

Concerning the tenant's position related to an alleged breach of his right to quiet enjoyment, the parties are referred to Residential Tenancy Policy Guideline #6 which addresses **Right to Quiet Enjoyment** and states, in part:

At common law, the covenant of quiet enjoyment "promis(es) that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interference with his or her tenancy."

Under the heading "Basis for a finding of breach of quiet enjoyment," this guideline states in part:

Historically, on the case law, in order to prove an action for breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;

- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour.

The above resource in addition to the current relevant legislation are accessible via the website: www.rto.gov.bc.ca/

I find on a balance of probabilities that any concerns the tenant may have had related to loud noises coming from the landlord's residence or the smell of marijuana were short-lived. Indeed, in his letter to the landlord dated December 31, 2008 he states he was a resident in the unit "for four nights and less than five days." The parties presented slightly different accounts of how much interaction occurred between them during this short period in regard to clearly defining and resolving any of these problems. I am of the view that the tenant's reasons for vacating the unit have not been fully set out. In any event, I find there is insufficient evidence to find that the tenant's entitlement to

quiet enjoyment has been breached. I therefore dismiss his claim for return of the security deposit.

As for a monetary order, based on the documentary evidence and testimony of the parties, I find that the landlord has established a claim of \$744.63. This is comprised of loss of rental income of \$650.00 for one month, the cost of advertising in the amount of \$44.63, and recovery of the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$325.00 plus interest of \$00.40, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$419.23 (\$744.63 - \$325.40).

Conclusion

I hereby grant the landlord a monetary order under section 67 of the Act for **\$419.23**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 16, 2009

Dispute Resolution Officer