



Dispute Resolution Services

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

Decision

Dispute Codes: MNR, MNDC

Introduction

This matter dealt with an application by the Tenant for a Monetary Order for compensation for emergency repairs and for damage or loss under the Act or tenancy agreement.

The Tenant served the Landlord by registered mail on February 11, 2009 with a copy of the Application and Notice of Hearing. According to the Canada Post on-line tracking system, the Landlord received a Notification card on February 12, 2009 and subsequently refused service of the hearing package. As a result, I find the Landlord was properly served pursuant to s. 89 of the Act with the Notice of Hearing and the hearing proceeded in his absence.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on December 15, 1999 and ended on March 3, 2007. Rent was \$1,300.00 per month. The Tenant said the Landlord gave him verbal notice on January 27, 2007 that he wanted to move into the rental unit and would therefore be ending the tenancy on February 28, 2007. The Tenant claimed that he did not realize until approximately a year later that the Landlord was required under the Act to give him two months written notice and compensation equivalent to one month's rent.

The Tenant also claimed that during the tenancy he paid for repairs to a garage door and to replace a garburator and sought to recover those amounts from the Landlord. The Tenant said he told the Landlord on one occasion that the garage door only worked some of the time but claimed it failed to work one day and therefore he had to make an emergency repair. The Tenant also said that he told the Landlord he would pay for the garburator repair if broke due to some fault of his. The Tenant said the Landlord told him in a letter dated January 7, 2008 that he found a coin in the garburator and therefore he felt the Tenant was responsible for the repair (which the Tenant denied).

Analysis

Section 49 of the Act says that if a Landlord wishes to use a rental unit for his own use or for a close family member, the Landlord **may** end a tenancy by giving the Tenant 2 months notice. Consequently, a Landlord does not have to give a written notice to end the tenancy, however, it is necessary where a Tenant is opposed to ending the tenancy. In this case, I find that even though the Tenant did not know about the 2 months notice under the Act, he nonetheless agreed to move out of the rental unit when the Landlord asked him to. As the Landlord did not give the Tenant a notice under s. 49, I find that the Tenant is not entitled to one month's compensation under s. 51 of the Act and that part of his application is dismissed.

Section 32 of the Act says that a Landlord is responsible for maintenance and repairs of a rental unit unless damage is caused by the actions or neglect of the Tenant. While the Tenant may have believed it was urgent to repair the garage door, I find that it was not an emergency repair as defined by section 33 of the Act. As a result, I find that it was necessary for the Tenant to give the Landlord an opportunity to mitigate his damages by asking the Landlord to repair it first. Based on the Tenant's evidence, I find that the Tenant did not ask the Landlord to repair the door. However, I also find that there is no evidence that the Tenant damaged the door and as a result, I award the Tenant one-half the cost of this repair or **\$68.64**.

On the other hand, I find that the Tenant did ask the Landlord to repair the garburator and that the Landlord failed to do so. Consequently, in the absence of any evidence from the Landlord that the damage was caused by the Tenant, I find that the Tenant is entitled to recover **\$93.87** for the cost of this repair.

Conclusion

A Monetary Order in the amount of **\$162.51** has been issued to the Tenant and a copy of it must be served on the Landlord. If the Landlord does not pay the amount, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.