Decision

Dispute Codes: CNR, MNDC, MND, MNSD, O, OPB, OPR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security and pet deposits in partial satisfaction of the claim and a cross-application by the tenants for an order setting aside a notice to end this tenancy and a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

At the outset of the hearing the parties agreed that the tenants had vacated the rental unit. I therefore consider the claims for an order of possession and for an order setting aside the notice to end tenancy to have been withdrawn.

Issue(s) to be Decided

Are the parties entitled to monetary orders as claimed?

Background and Evidence

The parties agreed that the tenancy began in early March 2009. Rent was set at $1,400.00 per month and the landlord collected security and pet deposits totaling $1,100.00. The tenants agreed to pay 2/3 of the utilities. The landlord was responsible for paying 1/3 of the utilities.

Landlord's Claim

I address the landlord's claim and my findings around each issue below:

1. **Unpaid Rent.** The landlord claims $1,400.00 in unpaid rent for the month of July. The tenants testified that the landlord agreed to apply the security and pet deposits to the rent for that month. The landlord denied having made such an agreement. The tenants provided a transcribed copy of telephone text messages in which the landlord purportedly agreed to apply the deposits, but copies of letters written by the landlord show that the landlord did not agree to retain the deposits. The tenants testified that they paid the landlord $250.00 to make up the balance of the rent, having applied $50.00 towards the Terasen Gas bill that was owing. In one of her

letters the landlord wrote that the tenants owed “1400 - 300 $ rent” which I take as an acknowledgment that the tenants had paid $300.00 of their rent. I find that the tenants still owe $1,100.00 for rent for the month of July. **I award the landlord $1,100.00**.

2. **Pet Deposit.** The landlord claims $300.00 as a pet deposit. I advised the landlord’s agent at the outset of the hearing that it was not open to me to order the tenants to pay a pet deposit after the tenancy had ended. The claim is dismissed.

3. **Oven.** The landlord claims $500.00 as the estimated cost of replacing an oven. The landlord’s agent testified that the tenants advised him that the lower heating coil in the oven had broken. The landlord’s agent has been unable to find a replacement coil and testified that he anticipates that the oven will have to be replaced. The agent estimated that the oven is approximately 10 years old. The tenants testified that the lower heating coil did not work at any time during the tenancy. In order to be successful in this claim the landlord must prove that the tenants caused damage to the oven coil beyond what may be characterized as reasonable wear and tear. I find insufficient evidence to prove that the breaking of the 10-year old heating coil was the fault of the tenants. The claim is dismissed.

4. **Carpets.** The landlord claims $200.00 as the estimated cost of repairing damaged carpets. The landlord provided no supporting evidence such as photographs of the allegedly damaged carpets and further failed to provide invoices or estimates to show the cost of repairing any damage. I find that the landlord has not proven her claim and the claim is dismissed.

Tenants’ Claim

I address the tenants’ claims and my findings around each issue below:

1. **Heat.** The tenants claim $300.00 in compensation for having no heat for approximately 6 weeks of the tenancy. The tenants claimed that the heat did not work in the unit and despite repeated telephone calls to the landlord and her agent, repairs were not performed. The tenants testified that finally they had a professional inspect the rental unit. The professional then telephoned the landlord to determine

whether the landlord was willing to pay for the repair and at that point the landlord sent a repairman. The landlord and her agent denied having been told about the heating problem over a period of several weeks and claimed that as soon as they found out about the problem, they immediately sent their own repairman to perform repairs. In order to succeed in this claim the tenants must prove that they advised the landlord of the problem and that the landlord failed to act in a timely manner. The tenants had no supporting evidence to show that they wrote letters or advised the landlord of the problem and I find that the tenants have not proven that they first contacted the landlord 6 weeks prior to the time the heating system was repaired. I find the tenants have failed to prove their claim and I dismiss the claim.

2. **Utilities.** The tenants claim $189.99 in unpaid BC Hydro bills and $93.54 in unpaid Terasen Gas bills. The tenants provided a copy of the last BC Hydro invoice showing that a total of $189.99 was owing. The tenants testified that they were unable to provide a copy of the Terasen bill because they had not yet received it. I find that the tenants are entitled to recover 1/3 of the Hydro bill and **I award the tenants $126.63**. In the absence of a copy of the bill, I am unable to determine the amount owing for the Terasen Gas bill and therefore dismiss that claim with leave to reapply.

3. **Moving costs.** The tenants claim $360.00 in moving costs. The tenants claim that they did not intend to move out of the rental unit before the end of the one year lease, but that the landlord's behaviour forced them to move prematurely. The tenants had originally applied to set aside the notice to end tenancy and had the choice to stay in the unit and proceed with their application. Instead, the tenants chose to vacate the rental unit. If they had been successful in obtaining the order setting aside the notice to end tenancy, the tenants could have made a further application for an order that the landlord comply with the Act and tenancy agreement. I find that the tenants made a choice to move rather than seek orders compelling the landlord to comply with her statutory obligations and find that the landlord should not be held responsible for that choice. The claim is dismissed.

4. **Oven.** The tenants testified that when the landlord removed the lower heating coil from the oven they were unable to use the oven from July 14 – August 1 and seek

$200.00 in compensation for the loss of use of the oven. The tenants testified that although their mother used the oven on one occasion at the start of the tenancy, they themselves did not attempt to use the oven until several months into the tenancy. I am satisfied that the tenants were deprived of the use of the oven for just over 2 weeks, I find that the oven would not have been used frequently and therefore I find their claim for compensation to be exorbitant. I find that $50.00 will adequately compensate the tenants for the loss of use of the oven. **I award the tenants $50.00.**

5. **Washroom.** The tenants claim $100.00 in compensation for a non-functional toilet. The tenants testified that one of the washrooms was not working properly during the tenancy and that the toilet would frequently not flush. The tenants claimed to have contacted the landlord and her agent on several occasions to no avail. The landlord and her agent denied having received any complaints whatsoever about the toilet. In order to succeed in this claim the tenants must prove that they advised the landlord of the problem and that the landlord failed to act in a timely manner. The tenants had no supporting evidence to show that they wrote letters or advised the landlord of the problem and I find that the tenants have not proven that they requested that the landlord repair the toilet. I find the tenants have failed to prove their claim and I dismiss the claim.

6. **Suffering.** The tenants claim $250.00 in compensation for “suffering, pushing, verbal abuse, accusing, etc.” The tenants testified that although the landlord permitted them to have a dog, she continuously complained because they permitted their dog to urinate and defecate on the upper balcony. The tenants then directed their dog to use the yard as a toilet to which the landlord further objected. The tenants further testified that the landlord would give then notices of entry which did not specify a time of entry. The tenants testified on one occasion, the landlord gave an improper notice, despite which the tenants permitted her to enter, and then tried to force her way through a baby gate in the residence, almost pushing their baby. The police were called and it appears no charges were filed. Although it is clear that tension ran high between the parties, I am not persuaded that the landlord has acted in such an egregious manner as to entitle the tenants to compensation. Accordingly

I dismiss the claim.

Conclusion

The landlord has been awarded $1,100.00. The tenants have been awarded $176.63. I find it appropriate to set off the awards as against each other, which leaves a balance of $923.37 in favour of the landlord. I order the landlord to retain $923.37 from the security and pet deposits of $1,100.00 and I order the landlord to return the balance of $176.63 to the tenants forthwith. I grant the tenants an order for that sum which may be filed in the Small Claims Court and enforced as an order of that Court. As each party has enjoyed partial success they will each bear the costs of their own filing fees.

Dated August 20, 2009.