

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This is the Tenants' application for a monetary order for return of the security deposit paid to the Landlord; compensation for damage or loss; and to recover the cost of the filing fee.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Are the Tenants entitled to a monetary order, and if so in what amount?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

The parties agreed on the following facts:

The rental unit is a basement suite in a house. The Landlord resides on the main floor of the house. Monthly rent was \$550.00, due on the first day of each month.

The Tenants paid a security deposit in the amount of \$150.00 to the Landlord on February 5, 2009.

The Tenants gave the following testimony:

The Tenants testified that on April 28, 2009, the Landlord told them he would be away on business from April 29 to May 8, 2009, and had given them permission to pay their May rent when he returned on May 8, 2009.

The Tenants testified that the Landlord returned on May 7, 2009, and had a loud party that night. At 4:00 a.m. on May 8, the Landlord pounded on their door, eventually

kicking it in, and entered their apartment. The Landlord was in a drunken state and demanded the rent, cursing at the Tenants. The Landlord then left the suite and returned to the party upstairs. As a result of the altercation, later that morning, the Tenants paid the Landlord the rent for May and gave the Landlord notice that they would be vacating the rental unit on June 1, 2009. The Tenants did not provide the Landlord with written notification of their forwarding address.

The Tenants began moving out of the suite on May 8 or 9, 2009. They returned to the rental unit on May 27, 2009, to retrieve more of their belongings, but the locks had been changed. They looked through a window into a common laundry room and saw their belongings in the laundry room. On May 31, 2009, they returned to the rental unit again and retrieved their beds, which had been left in the driveway, but the rest of their belongings were not there. The door to the rental unit was open, and it appeared that the Landlord was renovating the suite. The Tenants have tried to contact the Landlord with respect to return of the damage deposit and their missing personal belongings, but they have been unsuccessful.

The Tenants asked for return of their May rent, because the Landlord changed the locks and they did not have full use of the rental unit after May 9, 2009, due to the actions of the Landlord. The Tenants testified that they had one party at the rental unit after leaving on May 9, 2009. The Tenants asked for compensation for the loss of their belongings, in the amount of \$1,050.00, and return of their security deposit.

The Tenants provided a list of the missing items and stated that the computer desk and some of the kitchenware were new. Their oak table and five chairs were 3 years old. The remaining items were 3 to 5 years old.

The Landlord gave the following testimony:

The Landlord changed the locks on May 26 or 27, 2009. He thought the Tenants had moved out and it was a sunny day, so he left all of the Tenants' remaining possessions

outside against a fence. He did not take an inventory of the Tenants' possessions before setting them outside.

Between May 9 and May 20, 2009, the Tenants returned to the rental unit repeatedly with friends. They had parties at the rental unit and caused damage.

The Landlord's Witness gave the following testimony:

He was at the rental unit at the end of May, helping the Landlord repair holes in the walls of the suite. All of the Tenants' possessions were leaning against the fence outside.

The Tenants' Witness gave the following testimony:

She was with the Tenants on May 27, 2009, when they returned to the suite to collect some of the Tenants' belongings. The locks had been changed. She looked through a window and saw a table, some chairs, beds, a desk and some boxes in a laundry room.

Analysis

I accept the Tenants' undisputed testimony that the Landlord forced his way into the rental unit in the early morning hours of May 8, 2009, while the Tenants slept. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the provisions of Section 29. Section 29(1) of the Act states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

I find that the Landlord, in forcing his way into the Tenants' home on May 8, 2009, was in contravention of Sections 28 and 29(1) of the Act.

I accept the Tenants' undisputed testimony that the Landlord agreed to accept rent for the month of May on May 8, 2009. In any event, Section 26(3) and (4) of the Act provides that whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property, unless the landlord has a court order authorizing the action, or the tenant has abandoned the rental unit and the landlord complies with the regulations.

Part 5 of the *Residential Tenancy Act Regulation* (the "Regulation") provides that a landlord may consider that a tenant has abandoned personal property if for a continuous period of one month, the tenant has not ordinarily occupied the rental unit and has not paid rent. In this situation, the Tenants had paid rent for the month of May, and had not been absent from the suite for a continuous period of at least one month.

In any event, Part 5 of the Regulation provides that if a landlord believes a tenant has abandoned personal property, the landlord has a duty of care to store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal from the rental unit. The landlord must exercise reasonable care and caution to ensure that the tenant's property does not deteriorate and is not damaged, lost or stolen. Furthermore, the Landlord must keep a written inventory of the tenant's property.

Section 31(1) and (1.1) of the states:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

- (a) the tenant agrees to the change, and
- (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

The Landlord testified that he changed the locks to the rental unit on May 26 or 27, 2009, and removed the Tenant's belongings from the rental unit to the outside of the house. Therefore, I find that the Landlord was in contravention of Section 31 of the Act and Part 5 of the Regulation in changing the locks and removing the Tenants' possessions outside to an unsecure and exposed area.

Having found that the Landlord has not complied with the Act and the Regulation, I further find that the Tenants have suffered damage or loss as a result of the Landlord not complying. I find the amount claimed for loss of the Tenants' new computer table; 3 year old oak table and chairs; and kitchen utensils, dishes and appliances to be reasonable. I allow the Tenants' application and order that the Landlord pay the Tenants the total amount of their claim for damages, in the amount of \$1,050.00, pursuant to the provisions of Section 67 of the Act.

The Landlord did not meet the end-of-tenancy condition report inspection requirements and therefore, pursuant to Section 38(5) of the Act, has no right to retain all or part of the security deposit. I allow the Tenants' application for return of the security deposit in the amount of \$150.00. No interest has accrued on the security deposit.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

Conclusion

I hereby grant the Tenants a Monetary Order against the Landlord in the amount of \$1,250.00. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 17, 2009.
