

Decision

Dispute Codes: MND, MNSD, MNDC, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for a monetary order for loss of rental income, costs associated with miscellaneous cleaning and painting in the unit, retention of the security deposit, and recovery of the filing fee; and 2) from the tenants for return of the security deposit, a monetary order for breach of the right to quiet enjoyment, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on March 1, 2009. Rent in the amount of \$1,100.00 was payable on the first day of the month. A security deposit of \$550.00 was collected on February 23, 2009. A move-in condition inspection and report were completed on February 28, 2009.

By letter dated June 22, 2009, the tenants informed the landlord of their intent to vacate the unit before June 30, 2009. Thereafter, the tenants vacated the unit on June 28, 2009. While the move-out condition inspection is shown as having been completed on July 3, 2009, the move-out condition inspection report bears only the signature of the landlord. The tenant testified that the landlord made no contact with her to schedule a move-out condition inspection.

The landlord's agent testified that new renters were found for the unit effective October 1, 2009. Additionally, the landlord's agent testified that she was not in her current role as building manager at the time when events leading to this dispute took place.

The tenant testified that she lived in the building since 2006, and that relocation to the unit which is the subject of this dispute took place as a result of complaints from other residents about noise coming from her unit. The tenant considers that the landlord failed to constructively respond to the noise related complaints, and that the landlord also failed to properly inform her about the policy around restrictions on pets in the unit. In the result, the tenants seek compensation for stress related to dealings with the former building manager around noise complaints and policy in regard to pets on site, in addition to pressure felt to relocate and costs associated with relocation itself.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, and provides in part, as follows:

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 notice given by the tenants in late June 2009 to end the tenancy at the end of June 2009, does not comply with the above statutory provisions. Further, I find that as the landlord was unable to re-rent the unit for the month of July 2009, the landlord has established entitlement to compensation for loss of rental income for July 2009.

Section 35 of the Act speaks to **Condition inspection: end of tenancy**, and provides in part, as follows:

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Further, section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**, and provides in part:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35(2) *[2 opportunities for inspection]*...

As there is no evidence of the landlord's having offered "at least 2 opportunities, as prescribed, for the inspection," I hereby dismiss the landlord's application for a monetary order as compensation for costs associated with miscellaneous cleaning and painting in the unit.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**. Additionally, Residential Tenancy Policy Guideline # 6 speaks to **Right to Quiet Enjoyment**, and provides in part, as follows:

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. A tenant may file a claim for damages if a landlord either

engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

The full text of the legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

After consideration of all the documentary evidence and testimony given by the tenant, I find on a balance of probabilities that the tenants have failed to meet the burden of proving entitlement to compensation for an alleged breach of the right to quiet enjoyment. Accordingly, I dismiss that aspect of the tenants' claim.

As for the monetary order, I find that the landlord has established a claim of \$1,150.00. This is comprised of \$1,100.00 in loss of rental income for July 2009, in addition to recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit of \$550.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$600.00 (\$1,150.00 - \$550.00).

The application by the tenants for return of the security deposit and recovery of the filing fee is hereby dismissed.

Conclusion

Following from the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$600.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 12, 2009

Dispute Resolution Officer