DECISION

Dispute Codes: MND, MNDC, MNSD and FF

Introduction

These applications were brought by both the landlords and the tenant.

By application of October 8, 2009, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy served October 2, 2009. The landlords also sought a Monetary Order for the unpaid rent and damages, recovery of the filing fee for this proceeding and authorization to the security deposit in set off against the balance owed.

By application of October 7, 2009, the tenant sought to have the Notice to End Tenancy set aside and recovery of his filing fee. By submission received November 10, 2009, the tenant sought to amend his application to include claims for damages amounting to $9, 562.75.

This tenancy was the subject of a hearing on October 26, 2009 on the landlords' application for an early end of the tenancy. The tenant did not attend and the landlord was granted an Order of Possession effective two days from service of it on the tenant.

As the tenant vacated the rental unit on October 31, 2009, the matter of the Order of Possession is moot and not dealt with in the present hearing.

Issues to be Decided

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for the losses claimed, and authorization to retain the security deposit in set off against the balance owed..

The tenants' application requires a decision on whether he is entitled to return of the security deposit in double and reimbursement for the items claimed.

Background, Evidence and Analysis

This tenancy began January 12, 2007 and ended on June 6, 2009. Rent was $900 plus $88 per month utilities based on equalized billing and split 45 percent to the applicant tenant and 55 percent to the upstairs tenants. The landlord held security and pet damage deposits totalling $900 paid on January 3, 2007.

This dispute is complicated by the fact that the parties dealt informally on a number of matters now under dispute. The tenant did not give proper notice as required under section 45 of the *Act* and he breached the rental agreement by installing an air conditioner without the knowledge or consent of the landlord.

The landlord breached section 35 of the *Act* by not arranging for a joint move out inspection and by not completing the move-out condition inspection report, although the condition of the unit is not in dispute. The landlord further breached the *Act* by retaining the security deposit without the consent of the tenant and without making application to

claim on it within 15 days of the end of the tenancy as required by section 38(1) of the Act.

As to the tenant's claims, he gave evidence that he had provided the landlord with his forwarding address on July 4, 2009 and had not received his security deposit.

The tenant also claims $40 on the sale of an air conditioner to the landlord and $17.54 for replacement of a lock and the landlord concurs with these claims.

The landlord claims unpaid rent from June 6, 2009 to September 16, 2009 when the unit was re-rented on the grounds that the tenant had not given proper notice as required under section 45 of the *Act.* The tenant stated that he gave the landlord verbal notice toward the end of April 2009 that his notice would be forthcoming as he had purchased a new home and he confirmed on May 8, 2009 by telephone that he would be vacating on June 6, 2009. The landlord calculated the prorated rent to the 6th of June and the tenant paid the $197.58 as requested by the landlord.

The landlord further claims for unpaid utilities on the grounds that the rental agreement provides for equalized payments of $88 per month but the rental agreement sets the proportion at 45 percent of the total for the building and states that the equalized payments may change if the provider's equalized payments change.

Analysis

On the tenant's claim, section 38(1) of the *Act* is unambiguous in its requirement that the landlord must return the security deposit within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address. There is a question as to when the tenancy ended as the tenant did not give proper notice.

I find that by calculating and accepting prorated rent to June 6, 2009, the landlord accepted that the tenancy had ended. However, I find that whether in writing or not, the landlord was entitled for a full month's notice following the next rent due date after which notice was given.

Therefore, I find that the tenancy ended on June 30, 2009. I note also that, even if the September 16th date on which a new tenant moved in was accepted as the end date, the landlord still applied after the 15 day time limit. Having so found, section 38(6) of the *Act* compels me to find that the landlord owes the tenant the security deposit in double.

As noted, the parties agree that the landlord owes the tenant $40 for purchase of the air conditioner and $17.54 for the lock.

On the landlord's claim for rent, I find that, by her conduct in acknowledging the verbal notice in accordance with the informal pattern of the tenancy established by both parties, she did receive notice on May 8, 2009.

However, I also find that, even if that notice had been given in writing, it could not properly have taken effect until June 30, 2009. Therefore, I find that the tenant owes to the landlord the balance of the June rent beyond the prorated six days he paid, or $900 – $197.50 = $702.50.

On the landlord's claim for unpaid utilities, I find some ambiguity in the rental agreement. While it sets the proportion at 45% of the total and sets the equalized rate at $88 per month, it does account for the contingency of an increase by noting:

> "…the amount will remain the same each month unless the equalized payments change from the service provider at which point your portion will be changed to reflect the change."

The landlord stated that she had contacted BC Hydro to enquire about higher billings, but was told that the average would probably balance out over the year.

I see merit in the tenant's interpretation of the clause that it refers to an increase in equalized billing and not necessarily to an end of year adjustment of actual payments versus equalized billing estimate.

However, I find that interpretation is compromised by the fact that the tenant breached clause 19. of the rental agreement by installing an air conditioner without the knowledge or consent of the landlord.

I accept the landlord's calculation that the air conditioner added $569.17 to the utilities billings and award that amount. However, I accept the tenant's interpretation of the rental agreement to the extent that the remaining increase in utilities consumption was to be added as equalized billings set by the supplier and there was no such increase in equalized billings during the material times.

In addition, I find that the tenant should have been notified sooner of the increases not directly related to the air conditioner.

Having found similar merit in each of the applications, I find that the parties remain responsible for their own filing fees. I find that accounts balance as follows:

Award to tenant		
Security and pet damage deposits	$ 900.00	
Interest (January 3, 2007 to date)	27.13	
To double deposits per s. 38(6)	900.00	
Sale of air conditioner to landlord as agreed	40.00	
Reimbursement for new lock as agreed	17.54	
Sub total	$1,884.67	$1,884.67
Award to landlord		
Balance of rent for June 2009	$ 702.50	
Utilities increase due to air conditioner	569.17	
Sub total	$1,271.67	- 1,271.67
TOTAL		**$ 613.00**

Conclusion

Thus, the tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for $613.00 for service on the landlord.