

Decision

Dispute Codes: MNDC, ERP, RP, PSF, LRE, RR

Introduction

This hearing dealt with an application from the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, orders instructing the landlord to make repairs to the unit (some of them emergency), provide services or facilities required by law, suspending or setting conditions on the landlord's right to enter the rental unit, and permission to reduce rent for repairs, services or facilities agreed upon but not provided. The tenant withdrew his application to cancel the landlord's 1 month notice to end tenancy for cause, which formed part of his original application.

The landlord did not appear at the hearing, however, as the application for dispute resolution and notice of hearing were sent to him by way of registered mail, pursuant to section 90 of the Act he is deemed to have been served.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act

Background and Evidence

There is no written residential tenancy agreement in place for this month-to-month tenancy which began on July 1, 2009. Rent in the amount of \$450.00 is payable in advance on the first day of each month. The tenant states that rent does not include utilities. A security deposit of \$225.00 was collected on June 30, 2009.

The tenant testified that rent was previously paid directly to the landlord by way of the tenant's disability cheque. However, as a result of the tenant's miscellaneous concerns about the condition of the unit, his disability cheques are no longer made payable to the landlord, and he personally paid December's rent to the landlord.

The landlord served the tenant with a 1 month notice to end tenancy for cause dated November 9, 2009. A copy of this notice was not before me in evidence. The date shown on this notice by when the tenant must vacate the unit is said to be December 15, 2009. No reasons were shown on the notice for its issuance. When approached by the tenant about this notice, the landlord stated that he wanted the unit available for use by his family.

Subsequently, the tenant filed to dispute the 1 month notice on November 19, 2009. Following this, the landlord issued a 2 month notice to end tenancy for landlord's use of property dated November 27, 2009. Once again, a copy of this notice is not before me in evidence. The date shown on the notice by when the tenant must vacate the unit is said to be January 30, 2010. Pursuant to section 53 of the Act (**Incorrect effective dates automatically changed**), this notice is effective January 31, 2010. The tenant does not dispute this notice.

In his written submission the tenant set out in detail some of the problems associated with the unit. These include, but are not necessarily limited to, no connection to gas for heating the unit, or for providing hot water for personal hygiene or laundry or general cleaning; broken oven, broken door knobs, holes in windows, insufficient water pressure and so on. The tenant states that while these concerns have been brought to the landlord's attention, no remedy has been undertaken by the landlord.

The tenant also cited concern about the landlord's unannounced attendance to the unit.

Analysis

Section 51 of the Act speaks to **Tenant's compensation: section 49 notice**, and provides in part, as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

The tenant is not disputing the landlord's 2 month notice to end tenancy for landlord's use of property. Pursuant to the above statutory provisions, I find that the tenant may withhold payment of rent for the month of January 2010.

Section 29 of the Act addresses **Landlord's right to enter rental unit restricted**. For the convenience of the parties the text of this section is attached to this decision. I hereby order the landlord to comply FORTHWITH with these provisions where it concerns his attendance to the unit.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**. Section 33 of the Act addresses **Emergency Repairs**. Once again, for the convenience of the parties, the text of the two foregoing excerpts from the Act is attached to this decision.

The Act provides that “**service or facility**” includes, among other things, any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- appliances and furnishings;
- utilities and related services;
- laundry facilities;
- garbage facilities and related services;
- heating facilities or services;

Residential Tenancy Policy Guideline # 22 speaks to Termination or Restriction of a Service or Facility and provides in part, as follows:

A landlord must not:

- terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as a living accommodation....

Based on the documentary evidence and undisputed testimony of the tenant, I find that provision of heat and hot water to the unit have been either terminated or restricted. I further find that these are both essential to the use of the rental unit as living accommodation. I therefore order the landlord to FORTHWITH provide services and facilities / complete repairs including, but not necessarily limited to the following:

- heat
- hot water
- repairs to the oven, door knobs, windows, water pressure

Residential Tenancy Policy Guideline # 22 also provides as follows:

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damages as a result of the negligence, an arbitrator may find there has been both a breach of contract and a failure to take reasonable care which resulted in the damages suffered by the tenant and make an award for damages and / or breach of contract.

Following from the above, based on the documentary evidence and the affirmed and undisputed testimony of the tenant, on a balance of probabilities I find that the landlord has failed to provide services and facilities "essential to the tenant's use of the rental unit as a living accommodation." Accordingly, I find that the tenant has established entitlement as follows:

\$10.00 per occasion x 4 occasions per month x 6 months (July – December) =
\$240.00 for access to hot water / laundromat facilities;

\$2.50 per occasion x 10 occasions per month x 6 months (July – December) =
\$150.00 for access to hot water / public shower facilities;

\$2.50 per day x 184 days (July – December) = \$460.00 for the absence of
access to heat and hot water.

Total: \$850.00

As the tenant has been successful in this application, I also find that he is entitled to
recovery of the \$50.00 filing fee.

In summary, as for the monetary order, I find that the tenant has established a claim of
\$900.00 (\$850.00 + \$50.00). I hereby therefore issue a monetary order in favour of the
tenant for this amount.

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

Conclusion

I find that the tenant may withhold full payment of rent for January 2010.

Following from all of the above and pursuant to section 67 of the Act, I hereby issue a
monetary order in favour of the tenant in the amount of **\$900.00**. Should it be
necessary, this order may be served on the landlord, filed in the Small Claims Court and
enforced as an order of that Court.

The landlord is ordered FORTHWITH to comply with all of the orders set out above.

DATE: December 31, 2009

Dispute Resolution Officer