

DECISION

Dispute Codes MNDC OLC RR FF

Preliminary Issues

At the onset of the hearing I clarified the Tenants application at which time it was determined that the Tenants were not seeking a monetary order for reimbursement of costs they personally incurred to complete repairs to the rental unit but rather they were seeking a rent abatement for having to live in the rental unit while renovations were be completed by the Landlord.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for damage or loss under the Act, allow the Tenants reduced rent for repairs, an Order to have the Landlord comply with the Act, and to recover the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail on October 28, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord is deemed to be served the hearing documents on November 2, 2009, the fifth day after they were mailed as per section 90(a) of the Act.

The Landlord and both Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the Tenants entitled to Orders pursuant to sections 62, 67, and 72 of the *Residential Tenancy Act* (Act)?

Background and Evidence

The undisputed facts are the month to month written tenancy began on August 1, 2009 however the Tenants were allowed to move into the rental unit early on July 30, 2009.

The monthly rent is payable on the first of each month in the amount of \$1,200.00 and the Tenants paid a security deposit of \$600.00 on or before August 1, 2009. A move-in inspection report was completed by all parties on September 4, 2009.

The Tenants testified that when they entered into the tenancy agreement on July 3, 2009, the Landlord told the Tenants that part of the rental unit would be painted and have new flooring installed prior to the Tenants took possession on August 1, 2009. The Tenants confirmed that the move-in inspection report was completed over a month after they moved into the rental unit, on September 4, 2009 as this is when the repairs inside were supposed to be completed however as noted in the dates below the Landlord continued to work inside the rental unit after September 4, 2009.

The Tenants argued that when the Landlord was at the rental property it was from between 9:00 am to 10:00 am and lasted as late as 5:00 p.m. The Tenants provided a list of dates when the Landlord attended the rental unit and if he was working inside their rental unit or on the property working on the exterior of the house or yard as follows:

LANDLORD INSIDE RENTAL UNIT	LANDLORD AT RENTAL UNIT OUTSIDE
July 31, August 1	
August 2, 3, 4, 5, 6, 7	August 8, 9
August 10, 11, 12, 13, 14	August 15
August 17, 18, 19, 20	August 21, 22
	August 24, 25
August 26, 27, 28	August 29, 30
August 31, September 1, 2, 3, 4	September 5, 6, 12, 13
September 14, 15, 16	September 18, 19, 20, 21, 22
September 23	September 24, 25, 26
	September 27, 28, 29, 30
	October 8, 9, 10
	October 11, 12, 13, 14, 15, 16, 17
	October 18, 19, 20, 21

When asked what work the Landlord was performing on a select few dates listed, the female Tenant was able to provide testimony as to the exact work being performed on each date I questioned.

The Landlord provided testimony and stated that the Tenants testimony was filled with mistruths. The Landlord argued that he was not at the rental unit for that many days,

that while he was retired he was doing the Tenants a favour by completing more work than what was originally offered.

The Landlord testified that he discussed the "terms" of the tenancy with the Tenants whereby the Landlord told the Tenants that he would be painting a few rooms and replacing the carpet in a few rooms before they moved in. The Landlord stated that he told the Tenants before the tenancy began that the old door would be replaced and that he would be painting the exterior of the house for a few days at the end of summer.

The Landlord confirmed that he called the Tenants and demanded that they return to the rental unit to discuss damage he saw to the new door and that the Landlord threatened to evict the Tenants. The Landlord stated that an altercation took place which ended by the Landlord offering to have the Tenant provide the Landlord with guitar lessons in exchange for the damage caused to the door.

The Tenants testified that the Landlord never provided them with written notice of when he would be at the rental unit and that it would always be verbal notice at the end of every day when the Landlord would say "I'll be back tomorrow".

The Tenants confirmed that sometime shortly after applying for dispute resolution the Landlord attended the rental unit to try to serve the Tenant with a written 1 Month Notice to End Tenancy. The female Tenant stated that she refused to take the paper from the Landlord as she argued that they had not been making the noise.

The Landlord testified that he issued the 1 Month Notice to End Tenancy on November 10, 2009 because the tenants in the lower unit were complaining to him that the upper tenants were making too much noise at night. When asked if he had discussed this issue with the upper Tenants the Landlord answer "yes every two or three complaints".

The female Tenant testified that the Landlord never spoke to them about noise complaints from the lower tenant and that the first they had heard about it was the day when the Landlord tried to serve them with the eviction notice.

When asked if there was anything further he would like to add to his testimony the Landlord stated " the Tenants got more than originally offered" and that the Landlord kept asking the Tenants if they wanted additional renovations and that the Tenants continued to agree and that the renovations "went on and on and on".

I attempted to add a witness to the hearing to clarify the written statement provided by the Tenants' neighbour. The telephone system was not working properly and I was not able to add the witness to the hearing.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In regards to the Tenants' right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I note that while the Landlord is the owner of the rental property, at the moment he entered into tenancy agreement(s) with tenant(s), whether verbal or written, he gave exclusive occupation and possession of the rental property to the tenants, and is subject to the obligations as set out in the *Residential Tenancy Act (Act)*.

After the Tenants provided their testimony the Landlord was given the opportunity to respond at which time the Landlord began his testimony by attacking the veracity of the Tenants.

I note that during my cross examination of the Tenants regarding their testimony and documentary evidence the Tenants continually provided consistent and credible answers to my questions about which dates the Landlord attended the rental unit and what work was being performed on the specifically requested dates.

Having a Landlord attend at a rental unit on 68 out of 85 possible days (80% of the total time) constitutes an egregious violation to the Tenants' rights to quiet enjoyment and reasonable privacy and is in contravention of section 28 of the *Act*. I note that while the move-in inspection report was completed on September 4, 2009 the Landlord attended inside the rental unit four days after the inspection and continued to attend the exterior of the rental unit an additional 30 days. The Landlord did not cease his attendance at the rental unit until after the Tenants filed for dispute resolution.

Regardless of the purpose of the Landlord's attendance at the rental unit I find that 68 days of construction and renovation to far exceed the agreement that the renovations would be completed prior to the start of the tenancy.

Based on the aforementioned, I find that the Tenants have suffered devaluation to their tenancy and the Tenants have proven the test for compensation under the Act. I hereby approve the Tenant's monetary claim in the amount of \$1,600.00 (\$600.00 for August 2009, \$600.00 for September 2009, and \$400.00 for October 2009).

The Tenants have applied for \$50.00 of compensation for additional hydro costs incurred during the renovations. There is no documentary evidence before me to support this claim and I hereby dismiss the Tenants' claim without leave to reapply.

I question the Landlord's motive of issuing the 1 Month Notice to End Tenancy on November 10, 2009 only eight days after the Landlord is deemed to have received the Tenants' notice of dispute resolution. I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

The testimony and evidence supports that the tenant occupying the lower suite became a tenant after the upper Tenants took possession of the rental unit; that the lower tenant has since been hired to perform some of the renovations on the rental unit; and the lower tenant may be seen as a friend of the Landlord. I must caution the Landlord that if he intends to socialize with the tenant in the lower rental unit, that it be done in a manner whereby the Landlord is not infringing on the upper Tenants' rights to privacy and quiet enjoyment. The Landlord must not attend the rental unit, inside or out, without first complying with section 29 of the Act.

The Landlord's actions and testimony supports that the Landlord has had previous access to the Residential Tenancy Branch to acquire forms and information however the Landlord has provided testimony today and stated that he is not aware of his full obligations under the Act. Based on the aforementioned, I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his obligations as set forth under the *Residential Tenancy Act*.

Monetary Order – I find that the Tenants are entitled to a monetary claim, and that the Tenants are entitled to recover the filing fee from the Landlord as follows:

Compensation for devaluation of the Tenancy	\$1,600.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANTS	\$1,650.00

Conclusion

I HEREBY award the Tenants a monetary claim of \$1,650.00. The Tenants may reduce their monthly rent by \$550.00, for the months of January 2010, February 2010, and March 2010, (paying \$650 for each of the three months), in full satisfaction of their claim.

The Landlord is HEREBY ORDERED to comply with the *Residential Tenancy Act* and not attend the rental unit without proper notice in accordance with section 29 of the Act.

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: December 08, 2009.

Dispute Resolution Officer