

## **Decision**

**Dispute Codes:** MNDC, OLC, RPP, OPT, AAT

### **Introduction**

This hearing dealt with an application from the tenant for a monetary order as compensation damage or loss under the Act, regulation or tenancy agreement, an order instructing the landlord to comply with the Act, regulation or tenancy agreement, an order instructing the landlord to return the tenant's personal property, an order of possession, permission for access to / or from the unit for the tenant or the tenant's guests.

Both parties attended the hearing and give affirmed testimony.

A hearing in this same dispute was convened on December 10, 2009, and an Interim Decision was issued on that same date. The hearing was adjourned in order "to allow the tenant to serve the landlord with evidence." In the meantime, in the decision dated December 10, 2009 the dispute resolution officer ordered the landlord to "return the tenant's personal property forthwith." The remainder of the tenant's application was severed and was heard in this reconvened hearing.

### **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 evidence before me for this month-to-month tenancy which began May 1, 2005. Currently, rent in the amount of \$500.00 is payable in advance on the first day of each month. A security deposit of \$250.00 was collected on May 1, 2005.

By letter dated August 24, 2009, the landlord informed the tenant as follows:

As you know that we are going to major renovation this place for the month of November and December 2009. We want you to vacate your room just for two Months during the work period. We want you to come back January 1<sup>st</sup> 2010. Your cooperation would be greatly appreciated. [reproduced as written]

Subsequently, the landlord ended a number of other tenancies in the building by way of a signed "Mutual Agreement to End a Tenancy."

In a letter to the landlord dated September 3, 2009 from the office of the City of Vancouver's Chief License Inspector, the landlord was advised that eviction notices issued to residents in the building "have not been issued in accordance with the Residential Tenancy Act." The letter also confirms that the City "has not issued any orders or notices related to by-law violations that would necessitate the eviction of tenants from the building."

By way of letter dated September 22, 2009 to the landlord from a City of Vancouver District Property Use Inspector, the landlord was ordered to correct a number of deficiencies in the building by October 22, 2009. Deficiencies identified for the tenant's unit are limited to the following:

The entrance door does not close properly – the entrance door is to be repaired so it latches properly.

Further to correcting deficiencies identified in other units, by way of the above letter the landlord was ordered to correct a range of other deficiencies in the Common Area, and to undertake to engage the services of a pest management company.

The tenant's agent asserts that the tenant's attempts to pay rent for the month of November 2009 were refused by the landlord. The landlord's agents testified that the parties had verbally agreed the tenant would temporarily vacate the unit while renovations were underway. However, no related documentary evidence is before me to support that any such agreement was reached between the parties.

In any event, the tenant left his residence for the period from November 1 to 18, 2009 in order to visit family outside the province. Upon his return he found that entrances and windows in the building had been boarded up. On November 19, 2009 the tenant claims he was denied access to his unit. Thereafter, the tenant determined that all of his possessions left in the unit had been removed, and there was no immediate indication as to their disposition.

Subsequent to the hearing on December 10, 2009, respective efforts made by the parties to resolve questions around the specific whereabouts and condition of the tenant's possessions have been unsuccessful.

During the hearing the tenant confirmed his desire to immediately move back into the unit and to have his possessions returned in a timely manner. The landlord stated that the possessions are in storage, that the unit presently remains unsuitable for occupation, and inferred that the expectation of a state of readiness for occupation by March 1, 2010 for the tenant's unit would likely be too optimistic.

### **Analysis**

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**, and provides in part, as follows:

49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

There is no evidence that the landlord provided notice to the tenant pursuant to the above legislative provisions. Neither is there sufficient evidence before me which supports the landlord's position that remedial work required is still not sufficiently complete to enable the tenant to move back into the unit.

Based on the documentary evidence and testimony of the parties, I find that the tenant has established entitlement to an *order of possession* effective not later than *1:00 p.m., February 13, 2010*.

I further order the landlord to deliver to the unit by not later than *1:00 p.m., February 13, 2010*, all of the tenant's possessions which were previously removed by the landlord.

It appears that the landlord is not seeking rent for November or December 2009, January or for the period from February 1 to 12, 2010 while the unit is unoccupied.

As for the monetary order for damage or loss under the Act, regulation or tenancy agreement, arising from the landlord's manner of disrupting the tenancy, the extended and continued restriction of the tenant's access to the unit, and the unauthorized removal of the tenant's personal possessions, I find that the tenant has established a claim equivalent to one and one half month's rent in the total amount of \$750.00. In this regard, I therefore order that the tenant may withhold payment of rent for the period from February 13 to 28, 2010, and for the full month of March 2010.

As the tenant has not presently been afforded an opportunity to inspect the personal possessions removed from the unit, the related application for a monetary order arising from damage or loss is dismissed with leave to reapply.

### **Conclusion**

Pursuant to the above, I hereby issue an order of possession in favour of the tenant effective not later than **1:00 p.m., February 13, 2010**. This order must be served on the landlord. Should the landlord fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

DATE: January 21, 2010

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Dispute Resolution Officer

