



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, OLC, FF, O

Introduction

This hearing dealt with the tenants' request for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement, Orders for the landlord to comply with the Act, regulations or tenancy agreement, recovery of the filing fee and other issues. Both parties were represented at the hearing and were provided the opportunity to be heard. The landlord in attendance at the hearing indicated the other named landlord was out of town. I proceeded to hear from the landlord in attendance at the hearing on behalf of both landlords.

Upon hearing from the parties, I was satisfied the tenants had sufficiently served the landlords with their application and evidence. The landlord, however, provided evidence to the Residential Tenancy Branch on the day of the teleconference call and had not yet served the landlord's evidence upon the tenants. Therefore, I did not accept the landlord's documentary evidence; however, he was provided adequate opportunity to respond verbally to the tenants' allegations. The landlord also provided additional information after the teleconference call which I could not consider.

The landlord stated that he has initiated a dispute against the tenants; however, the landlord's application had not yet been served upon the tenants and I could not proceed to deal with the landlord's application.

Issues(s) to be Decided

1. Have the tenants established an entitlement to monetary compensation from the landlord and if so, the amount?
2. Are any other Orders to the landlord necessary?
3. Award of the filing fee.

Background and Evidence

Upon review of the evidence before me I make the following findings. The female tenant and the landlord signed a tenancy agreement on June 2 and June 4, 2009 respectively. The one-year fixed term tenancy was to commence on July 1, 2009 and the tenants were required to pay rent of \$2,200.00 per month. The rental unit was the upper and lower units in a house and when the tenancy agreement was signed the rental unit was undergoing significant renovations. An addendum was attached to the tenancy agreement and was signed by the parties on June 4, 2009. The addendum provides that "if major work on the house is not complete by scheduled move in date of July 1st and unfinished portion (or portion thereof) is likely going to cause inconvenience then we will, IN GOOD FAITH, negotiate and adjusted rent based on the scope of the work involved and level of inconvenience caused to you the tenant". The tenants had provided the landlord with a cheque for the \$1,100.00 security deposit but the cheque was not cashed by the landlord by the time the tenants placed a stop payment on the cheque on July 5, 2009.

I heard testimony that the tenants arrived at the rental unit on July 1, 2009 but that the house was still undergoing construction and there was no running water. The tenants moved their belongings into the basement and garage. The tenants stayed with friends on July 1, 2009 and in a hotel on July 2, 2009. I was provided documentary evidence that on July 2, 2009 the tenant and landlord signed a document whereby the landlord agreed "...to compensate the legal tenants ... all costs incurred during the month of July until the unit ... is livable and the tenants have complete occupancy and exclusive

possession. This compensation may be reduced from their rent for the month of July which will be paid once the tenants are granted complete occupancy.” The agreement specifies that the tenants would provide receipts to the landlord for their expenses and the expenses would include food costs and accommodation and well as moving and storage costs after July 2, 2009, if necessary.

I heard testimony that there was a water leak on July 2, 2009 that caused water to leak on the tenant’s belongings stored in the basement. The tenants were also concerned about security of their possessions at the rental unit since construction workers were able to gain entry into the rental unit. The tenants removed their belongings from the basement and moved them to a storage unit on July 3, 2009.

I was provided documentary evidence that on July 3, 2009 the landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent*. The Notice indicates that rent of \$1,100.00 was outstanding as of July 1, 2009 and that the Notice was posted on the door. The landlord testified that he posted the Notice on the door of the rental unit on July 3, 2009 and since he had not seen the tenants at the rental unit after posting the Notice, he emailed the tenants on July 5, 2009 to inform them that the Notice was on the door. The tenant’s filed an application to dispute the Notice to End Tenancy. At tenant’s previous application for dispute resolution was dismissed with leave to reapply.

Upon enquiry, the landlord stated that the house was ready for occupancy July 7, 2009. The tenants testified that they had viewed the house on July 6, 2009 and taken photographs on July 6, 2009 showing the house still had a lot of work to be done at that time. The landlord testified that the tenant’s pictures were mainly of the basement unit which was not as complete as the upper unit. The parties provided consistent testimony that there was a verbal agreement reached at some point whereby the tenants would only have to pay one-half the rent owing for July 2009 with the understanding that the upper unit would be made liveable on a priority basis and the basement unit completed afterwards. The tenants agreed there were more pictures taken of the basement unit on

July 6, 2009 than the upper unit with the explanation that the construction worker and friend of the landlord impeded their access to the upper unit.

In making this application, the tenants are seeking compensation for the following amounts:

| | |
|--------------------------------------------------|---------------|
| Food – July 2 & 3, 2009 | \$ 118.99 |
| Hotel – July 2, 2009 | 113.44 |
| Emergency sublets – July 6 through 19, 2009 | 550.00 |
| Moving costs – July 3 from rental unit | 160.00 |
| Moving costs -- July 15, 2009 from storage | 90.93 |
| Storage | 19.05 |
| Postage and photograph development for dispute | 61.60 |
| Filing fee for this dispute and previous dispute | 100.00 |
| Postage for previous dispute | 9.66 |
| Lost wages – two days for moving | <u>300.00</u> |
| TOTAL | \$ 1,523.67 |

As evidence for the hearing, the tenants provided copies of receipts and a letter from the male tenant's employer confirming the male tenant lost two days of work for purposes of moving and that the tenant is paid \$20.00 per hour, 7.5 hours per day. The tenants provided photographs of the property as of July 2, 2009, July 3, 2009 and July 6, 2009.

The landlord indicated a willingness to pay for the tenants' hotel costs but claimed he had not received any receipts from the tenants. The landlord also testified that the City of Vancouver had erroneously indicated that no building permits had been obtained for the construction project when in fact an electrical permit had been obtained.

Analysis

Although the tenancy agreement was signed by only the female tenant and the landlord, the documents signed by the tenant and landlord appear to recognize both tenants as legal tenants under the tenancy agreement. Further, the landlord did not indicate an objection to recognition of the male tenant as a tenant for this dispute. Therefore, this decision and the accompanying Monetary Order name both tenants.

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In this case, I am satisfied the parties had a valid tenancy agreement starting June 4, 2009 and in accordance with the terms of the tenancy agreement, the landlord was obliged to provide possession of the rental unit to the tenants and the tenants were obliged to pay rent of \$2,200.00.

Section 14 of the Act provides that a tenancy agreement may be changed or amended if both the landlord and the tenant agree to the amendment. Upon review of the document signed by both parties on July 2, 2009, I am satisfied that the parties had agreed that rent did not have to be paid until the tenants were provided occupation and possession of the rental unit. Based on the evidence before me, I am satisfied the landlord issued a 10 Day Notice to End Tenancy before the tenants were provided occupancy of the rental unit and the Notice was invalid in accordance with the amended terms of tenancy.

Upon review of the July 6, 2009 photographs, I find there is sufficient photographic evidence of the upper unit to indicate a strong likelihood that the rental unit was not in a liveable condition by July 7, 2009 as claimed by the landlord. Therefore, I find the tenants entitled to their accommodation costs for the month of July 2009.

I am also satisfied that the parties had agreed on July 2, 2009 that the tenants would be entitled to compensation for food, accommodation, storage and moving costs incurred

for the month of July 2009. The documentary evidence provided by the tenants satisfies me that the tenants are entitled to recover the following amounts from the landlord.

| | |
|---------------------------------------------|---------------|
| Food – July 2 & 3, 2009 | \$ 118.99 |
| Hotel – July 2, 2009 | 113.44 |
| Emergency sublets – July 6 through 19, 2009 | 550.00 |
| Moving costs – July 3 from rental unit | 160.00 |
| Moving costs -- July 15, 2009 from storage | 90.93 |
| Storage unit | 19.05 |
| Filing fee for this dispute | 50.00 |
| Lost wages – two days for moving | <u>300.00</u> |
| TOTAL | \$ 1,402.41 |

I have denied the tenant's claims for postage and photographs as the Act provides for recovery of the filing fee paid for a dispute but not the other costs associated with a dispute resolution proceeding. I have also denied the filing fee paid for the previous dispute proceeding as an award of the filing fee was before another Dispute Resolution Officer. I do not have the authority to make awards that would change a previous dispute resolution proceeding.

The tenants are provided a Monetary Order in the amount of \$1,402.41 to serve upon the landlord and file in Provincial Court (Small Claims) to enforce as an Order of that court.

I do not find it necessary to issue any other Orders against the landlord.

Conclusion

The tenants have established an entitlement to monetary compensation from the landlord in the amount of \$1,402.41. The tenants have been provided a Monetary Order in this amount to serve upon the landlord.

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: January 15, 2010.

Dispute Resolution Officer