

DECISION

Dispute Codes: MNDC, MNSD and FF

Introduction

These applications were brought by both the landlord and the tenants.

By application of October 8, 2009, the landlord seeks a Monetary Order for loss of rent, damages, recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

By application of January 15, 2010, the tenants seek a Monetary Order for loss or damage under the *Act*, rent abatement, loss of quiet enjoyment, recovery of the filing fee and return of the security deposit

Issues to be Decided

The landlord's application requires a decision on whether the landlord is entitled to a Monetary Order for loss of rent, damages and recovery of the filing fee for this proceeding.

The tenants' application requires a decision on whether they are entitled to a Monetary Order for rent abatement, damage or loss under the *Act*, recovery of the filing fee for this proceeding and return of the balance of their security deposit.

Background, Evidence and Analysis

This tenancy began on November 1, 2007 and ended on September 30, 2009. Rent was \$1,400 per month and the tenants were responsible for furnace oil. The landlord holds a security deposit of \$700 paid on October 28, 2007.

Landlord's claims

During the hearing, landlord submitted the following claims and I find as follows:

Loss of rent - \$1,400. The landlord gave uncontested evidence that the tenants gave written notice on September 22, 2009 to vacate the rental unit on September 30, 2009. The landlord was unable to find a new tenant until December 1, 2009 and claims loss of rent for October. As section 45 of the *Act* requires that tenants give one month's notice in advance of the next rent due date, I find that the notice could not have taken effect until October 31, 2009. Therefore, the landlord is entitled to receive the rent for October and I find that the tenants must pay the month's rent. I reject the tenant's claim that the rental unit was so uncomfortable that they could not postpone the move long enough to give full and proper notice. The claim is allowed in full.

Carpet cleaning - \$110. Though the actual cost was \$147, the landlord claims the amount agreed to with the tenant during the move-out inspection, and the tenant concurs. This claim is allowed in full.

Replace oven door - \$262.08. The parties concur that the glass on the oven door was broken and the landlord substantiated the repair cost with a receipt. The tenants stated that the glass broke when the tenant barely touched it with a cast iron pan while putting it in the oven drawer, and that the glass broke because it had become brittle over time. The landlord stated that the oven is self-cleaning and designed to withstand higher temperatures.

I will give partial benefit of the doubt to the tenants, but considering that the door was struck with a cast iron pan, however lightly, I find that the accident hastened the need to replace the door and find that they must pay half of the replacement cost at \$131.04.

Replace light bulbs - \$15. The landlord said the tenants left the rental unit with five light bulbs needing replacement. As the landlord did not have a receipt and the cost was an estimate, I reduce this award to \$10.

Filing fee - \$50. As the landlord's application has succeeded in large, I find that the landlord should recover the filing fee from the tenants.

Tenants' claims

Loss of quiet enjoyment - \$5,750. The tenants claim return of rent in the amount of \$250 for each of the 23 months of the tenancy on a claim that their right to quiet enjoyment was breached due to inadequate sound insulation between their unit and the one below. For example, the tenant stated that he had disturbed the other tenant simply by playing his acoustic guitar. The tenants submitted a letter from the tenant who lived below them attesting to the poor sound insulation between floors.

Residential Policy Guideline 6-12 instructs that: "Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the convenient of quiet enjoyment."

The guide further instructs that, "Temporary discomfort or inconvenience does not constitute a basis for a breach of quiet enjoyment."

The rental unit is in an older side by side duplex each with non-conforming basement suites which, according to the landlord, appears to have been built in the 1970's. I find that it would have been evident to a prospective tenant that the suites would not have had soundproofing on a standard with buildings of steel and concrete construction and some degree of sound leakage was probable.

In addition, section 32 of the *Act* which deals with a landlord's duty to maintain and repair the building, tempers these requirements with consideration of the age and character of the building. Therefore, I must reject the tenants' contention that the landlord misrepresented the rental unit by failing to alert them to sound disturbance from the unit below as such was reasonably to be expected. In addition, taking into account that this application was brought over two years after the tenancy began and three and one-half months after it ended, I must question the degree to which sounds disturbed the tenants. This part of the claim is dismissed.

Recovery of fuel oil payments - \$750. The tenants also seek return of \$750 they paid for fuel oil after the landlord installed a new furnace reducing their oil consumption from 863 litres to 189 litres for the approximate period from November through April in '07/'08 vs '08/'09. I note that the tenants first notified the landlord in writing of this concern by letter of June 2008 and a new furnace was installed in October 08. Given that there is minimal oil consumption from June to October period, I find that the landlord responded promptly and appropriately. I further concur with the landlord's agent that a landlord should not be penalized for installing a new, more efficient furnace. This part of the claim is dismissed.

Hot water concerns - \$475. The tenants claim this amount on the grounds that, because they shared a hot water tank with the downstairs unit, their heavy use times would sometimes coincide with the heavy use times of the other tenants.

In addition to them being out of hot water on occasion, this could also result in having shower water turn too hot when an occupant of the other unit ran a lot of cold water. This matter became more troublesome when the single downstairs occupant moved out and a family of four or five moved in.

The landlord's agent gave evidence that a plumber had been called to the residence to attempt to improve matters on at least four occasions.

Again, taking into account the age and character considerations of section 32 of the *Act*, and the quiet enjoyment parameter of "temporary discomfort or inconvenience" of the previously cited guidelines, I am not persuaded that the tenants are entitled to monetary compensation on this part of the claim. In addition, I noted that it was available to the tenants to make application for an order for repairs under section 32 of the *Act* during the tenancy and that they did not do so indicates a measure of the degree to which they were inconvenienced.

Damage deposit - \$590. As the landlord had made timely application to retain the security deposit in set off, its disposition will depend on a final balancing of accounts at the conclusion of this decision.

Moving Expenses - \$700. I do not accept the tenants' assertion that they were forced by living conditions to exit this tenancy early and I find that they are not entitled to recover moving expenses.

Filing fee - \$100. I do not find sufficient merit in the tenants' application to warrant passing that cost to the landlord.

Having found the tenants' application wanting on its merits, it is dismissed without leave to reapply.

Therefore, including authorization to retain the security deposit in set off, I find that the tenants owe to the landlord an amount calculated as follows:

Loss of rent for October 2009	\$1,400.00
Carpet cleaning	110.00
One-half cost of oven door replacement	131.04
Light bulb replacement	10.00
Filing fee	<u>50.00</u>
Sub total	\$1,701.04
Less retained security deposit	- 700.00
Less interest (October 28, 2007 to date)	- <u>12.40</u>
TOTAL	\$ 988.64

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$988.64, for service on the tenants.

February 4, 2009