

DECISION

Dispute Codes: MNDC, MNSD and FF

Introduction

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

By application of February 17, 2010, the landlord seeks a Monetary Order for loss or damages under the legislation or rental agreement, damage to the rental unit, unpaid rent or utilities, recovery of the filing fee, and authorization to retain the security deposit in set off. As the tenants vacated on February 7, 2010, the landlord's request for an Order of Possession is moot. The landlord reduced submitted claims to the value of the security deposit in an effort to bring matters to conclusion.

By prior application of January 15, 2010, the tenants sought to have set aside a Notice to End Tenancy for cause served on January 7, 2010, a Monetary Order for loss or damages, and order that the landlord comply with the legislation or rental agreement and recovery of their filing fee. Again, the request to set aside the Notice to End Tenancy is moot as is the request for an order of compliance as the tenancy has ended.

As a matter of note, the tenants named the landlord's former agent as a respondent on their application. As he has since been replaced, I have amended the application to remove his name as authorized under section 64(3)(c) of the Act.

Issues to be Decided

This matter requires a decision on whether and which of the parties might be entitled to a Monetary Order for the damages claimed, and whether the landlord should be authorized to retain the security deposit in set off against any balance.

Background, Evidence and Analysis

This tenancy began on August 1, 2009 and ended on February 7, 2010 pursuant to a Notice to End Tenancy for cause served on or about January 7, 2010. Rent was \$1,300 per month due on the fifth of the month and, under the rental agreement, tenants were responsible for one-half of the utilities which were billed to the landlord.. The landlord holds a security deposit of \$650.

The “landlord” is the son of the property owner and manages the property on his mother’s behalf, an appointment in which he replaced his 19-year old brother on December 1, 2009. As did his brother, the landlord resided in the basement suite of the rental building.

During the hearing, landlord submitted evidence in support of claims for carpet cleaning at \$170, general cleaning at \$60, paint at \$300, tenant’s half of unpaid gas of \$401.38 (incomplete), and tenant’s half of hydro \$206.83 for a total of \$1,138.21 but agrees to settle for authorization to retain the security deposit of \$650 in order to bring the matter to conclusion.

The tenants acknowledge that they were responsible for 50 per cent of utilities but stated they had made no payments as they had not been presented with copies of the bill. Total equalized billing was \$130 per month, of which the tenants’ share would have been \$65 per month.

The tenants make claim for \$4,602.50 in compensation for moving expenses, an unusable head in the in-house vacuum system, an unusable deck, a leaking shower

head, an overheating hot water tank, loss of food due to the fridge freezer not working, trouble with the furnace, and a drip from leaking eaves troughs.

The parties each claim harassment by the other.

Analysis

This matter was complicated by the fact that the parties gave contradictory evidence on practically all matters in dispute. For example, the landlord gave evidence that there was no provision of the in-house vacuum system in the rental agreement and that while the deck was in poor condition, he was using it with no concerns. He conceded that his younger brother, due to his inexperience, may have promised remedy.

The landlord stated that he had had a plumber attend the rental unit to deal with the leaking tap and to repair the hot water tank. He also stated that he has had no problem with the fridge which he is now using.

Given that the tenant's application followed their receipt of a Notice to End Tenancy, I find that there is some element of retribution in their application, and although the matters should have been addressed when they were contemporary, I find that there is some merit in the tenants' claims.

As they moved out by their own choice, even though they had filed to contest the Notice to End Tenancy, they may not claim for moving expenses. As to the balance of their claims, I am unable arrive at a precise, detailed accounting given the divergence of evidence presented.

I find that the landlords' proposal to settle matters with authorization for him to retain the security deposit was a sincere, reasonable and fair gesture to conclude the tenancy. At

the same time, I note that the landlord concedes that there was some inefficiency in the management of the tenancy.

Find that the landlord is entitled to an award of \$450 and may retain that amount from the tenants' security deposit.

I find that the tenants are entitled to an award of \$200, and provide them with a Monetary Order for that amount for service on the landlords.

The parties each remain responsible for their own filing fees.

Conclusion

I hereby authorize and order that the landlord may retain \$450 from the tenants' security deposit.

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, in the amount of \$200 for service on the landlord.

February 26, 2009