

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both the landlord and the tenants have applied for monetary orders.

The hearing was conducted in person in Victoria, BC and was attended by the landlord, tenants and a witness for the tenants.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided whether the tenants are entitled to a monetary order for the security deposit, and for compensation for damage or loss under the *Act* and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 32, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on August 2, 2009 for a one year fixed term tenancy beginning on September 1, 2009 for a monthly rent of \$1,300.00 due on the 1st of the month, a security deposit of \$650.00 was paid on August 2, 2009;
- A copy of an advertisement for the rental of the property dated July 25, 2009;
- An undated letter from the tenants to the landlord requesting the security deposit and compensation for transporting and storage of belongings for a total amount of \$978.73;
- A copy of a truck rental agreement in the name of the tenant for \$223.52 for a truck rental for pick up on August 28, 2009 and return on August 29, 2009;
- A receipt for rental of a storage facility dated August 28, 2009 in the amount of \$152.25;
- A receipt from a cleaning company dated August 28, 2009 for window and carpet cleaning, in the amount of \$199.50;
- A written statement from the landlord's cleaner dated September 1, 2009 stating that on August 28, 2009 the tenant's arrived at 8:00 a.m. with their belongings

and later returned stating they were taking their belongings and not moving in; and

- 7 undated photographs of the interior of the rental unit. In the hearing the landlord provided a receipt showing the date of development of the photographs as being September 1, 2009.

The tenants have submitted the following documents into evidence:

- A summary of their claim and a list of witnesses;
- An undated letter from the tenants to the landlord requesting the security deposit and compensation for transporting and storage of belongings for a total amount of \$978.73;
- An undated letter from the tenants again requesting reimbursement in the amount of \$978.73;
- A copy of an advertisement for the rental of the property dated July 25, 2009;
- A copy of another advertisement dated September 4, 2009 for the same property;
- A letter dated September 17, 2009 from the tenants' first witness stating she attended with the tenants at a "pre-inspection" on August 31, 2009;
- A letter dated September 17, 2009 from the tenants' second witness stating that she overheard the tenant leave a message for the landlord on August 25, 2009;
- A letter dated September 18, 2009 from the tenants' third witness stating that he looked in the windows of the rental on September 18, 2009 and it looked like it was still under renovation.
- A copy of a tenancy agreement signed by the parties on August 2, 2009 for a one year fixed term tenancy beginning on September 1, 2009 for a monthly rent of \$1,300.00 due on the 1st of the month, a security deposit of \$650.00 was paid on August 2, 2009;
- A copy of a truck rental agreement in the name of the tenant for \$223.52 for a truck rental for pick up on August 28, 2009 and return on August 29, 2009;
- A receipt for rental of a storage facility dated August 28, 2009 in the amount of \$152.25; and
- A copy of a negotiated cheque in the amount of \$650.00 dated July 31, 2009 made payable to the landlord for the security deposit.

The parties agreed that the rental unit had originally been showed to the tenants in late July 2009 and on August 2, 2009 the parties signed the tenancy agreement. After this the parties disagree on many of the details of the dispute.

The tenant testified that she provided the landlord with information regarding both of the tenants' medical conditions that would require no more renovations to be completed in the house close to the move in date.

The landlord, however, testified that the tenants had asked her to just make sure the basement was dry-walled and taped and the tenants would complete the rest. The tenant stated she had driven by the rental unit several times during the month of August

2009 and became fearful that the renovations would not be complete prior to the start of the tenancy.

The landlord had agreed the tenants could move some items in on August 29, 2009. On August 28, 2009 the tenants arrived at the property with some of their belongings and when they were there they spoke with one of the landlord's cleaners and indicated they would not be moving in as the place was not habitable.

The landlord's witness who attended the hearing via conference call indicated that she had told the tenants that she had cleaned the cement floors in the basement and garage and that since the contractors were working on the place still, she had been following them and cleaning a room after they were finished in it.

The landlord testified the tenants contacted her on August 29, 2010 to complete a move in inspection on August 31, 2009 at 7:30 p.m. The tenants testified that the house was uninhabitable. They stated there was drywall dust on the floors in the living and dining rooms, some pieces of wood on the deck and some globs of drywall on the floor in the basement.

By the end of the inspection the landlord testified that the tenants provided her with the undated letter noted above requesting their security deposit and compensation for hiring a moving vehicle and storage. The landlord testified that the tenants did not once offer or negotiate any different terms they simply provided her with the letter and left the rental unit.

The tenant testified that she gave the landlord several opportunities to provide alternate solutions but the landlord did not provide any options, it was simply, you must take it and pay the rent. The tenant testified that she did not provide any options to the landlord herself.

The tenants' witness testified that there was just no way the tenants could move in, that the place wasn't habitable, primarily because the dry-walling had not been completed in the basement. She doesn't recall any of the conversations held between the landlord and tenants.

The tenants testified that they both had medical conditions that prevented them from living in an area undergoing renovations, the female tenant stated she has environmental sensitivities and the male tenant has asthma. No medical documentation was provided.

Analysis

Section 16 of the *Act* states 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.

As such, the landlord is required under Section 32 to provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenants failed to provide any documentation regarding medical conditions that precluded them from living in and around any renovation materials, products, or by-products. I am also not satisfied that the tenants took any steps to mitigate their losses, as is required under Section 7 of the *Act*, when making a claim for compensation.

From the testimony and evidence provided I am not satisfied that the rental unit, when inspected on August 31, 2009, was unsuitable for occupation. As such, the tenants would be required under Section 45 of the *Act* to provide the landlord with a notice to end the tenancy.

As this was a one year fixed term tenancy Section 45 allows a tenant to end a tenancy agreement if the landlord has failed to comply with a material term of the tenancy agreement, if, the landlord has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

Having failed to show the landlord has failed to comply with a material term, the only other option for the tenants is to end the tenancy not earlier than the date specified in the tenancy agreement as the end of the tenancy (i.e. August 31, 2010).

As I have found that the tenants have failed to show that the landlord either breached the tenancy agreement or Section 32 of the *Act*, I find the landlord is entitled to rent for the month of September 2009, in lieu of any notice from the tenant.

As the landlord testified she was not able to rent the property until November 1, 2009 she may be entitled to rent for the month of October, 2009. The landlord's application did not include a request for compensation for lost revenue for October 2009; however, she is at liberty to apply for compensation under a separate Application for Dispute Resolution.

Conclusion

Based on the above analysis, I dismiss the tenants' application in its entirety, without leave to reapply.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,350.00** comprised of \$1,300.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$650.00 in partial satisfaction of this claim. I grant a monetary order in the amount of

\$700.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: March 15, 2010.

Dispute Resolution Officer