

DECISION

Dispute Codes OPC, MND, FF

Introduction

This hearing was convened by conference call to deal with the landlord's application for an Order of Possession for cause, a monetary order for damage to the unit, and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing, the landlord advised that the tenants have vacated the unit and the Order of Possession is not required. The landlord also applied to amend her application to change the amount of her claim, and to change the details of the dispute to show that the hot water tank was natural gas, not oil. The amendments were allowed.

Both parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damages?

Background and Evidence

This tenancy began on December 4, 2009. The tenants paid a pro-rated amount of rent for the month of December in the amount of \$700.00, and rent in the amount of \$900.00 was payable on the 1st of each month thereafter. At the outset of the tenancy, the tenants paid a security deposit in the amount of \$450.00, which is still held in trust by the landlord.

The rental is the main house on a property that has an additional smaller house. An inspection report was completed at the time that the tenants moved into the house, but not when they moved out.

The landlord is claiming that the tenants drove over 2 big hedges in the yard, which may have to be dug out. She is also claiming that she had to take 1 load of garbage to the dump after the tenants moved out. She further testified that there were staples on the floor, ceiling and walls in the laundry room that she had to remove, and rotted food was found in the fridge and cupboards after the tenants moved out. She is also claiming general cleaning for the house in the amount of \$200.00.

The landlord further testified that the tenants had installed a laminate floor in the living room of the house, which the landlord was pleased with to begin with, and the tenants gave the landlord receipts for that installation, and deducted \$380.00 from the rent for the month of February, 2010, and paid the landlord \$520.00 for the balance of the rent. The landlord then gave the tenants a receipt for \$900.00. The landlord testified that the laminate floor was removed and is claiming damages for replacing it. The tenant testified that she has no knowledge of the laminate floor being removed, and that it was a permanent fixture, so the boards could not be removed and reused.

The landlord further testified that the tenants changed the hot water tank from natural gas to electricity without the knowledge and permission from the landlord. When the landlord noticed the change, she contacted her insurance company, who told her that she must evict the tenants or order that the tenants hire licensed professionals to change it back because it was considered a structural change, and wanted proof that it had been done by licensed professionals.

The tenant testified that the smaller house on the property caught fire on February 21, 2010, and a person perished in that fire. Because the meters for both houses were in the main house occupied by these tenants, and there was no ground strap on the smaller house, the fire travelled up the electrical wires and started a fire to the wires in the attic of the main house.

The tenants did not have renters' insurance, but were housed for 2 nights by Victim Services in a motel. Other than that, the tenants had to cook over an open fire in the front yard because BC Hydro had to cut off the power to that main house. The tenant further testified that the fire trucks had driven over the hedges, not the tenants. The

tenants did not apply for a rent abatement or for damages for not being able to reside in the house after the fire, but dispute the claim for cleaning because they had no hot water and no electricity, so cleaning was not possible. She further testified that when the tenants moved in, they took a load of garbage to the dump from the previous tenant. This fact is not disputed by the landlord. The tenant stated that she has no knowledge of any staples in the laundry room.

The tenants did not provide a forwarding address in writing to the landlord until March 15, 2010, which the landlord states she has not yet received. During the hearing, the landlord was given the address, and was advised that she would be required to return any part of it ordered as a result of this hearing.

Analysis

The landlord has the burden of proving that the damages claimed are the responsibility of the tenant.

I find that the tenants did make structural changes to the unit by changing the hot water tank from natural gas to electricity, and they are responsible for the cost of returning it to its original state.

I further find that the tenant's testimony that the hedges were damaged by the fire trucks is reasonable in the circumstances, and I make no award for the staples in the laundry room or for cleaning.

Conclusion

The landlord's application for damages is hereby awarded at \$226.80 and the landlord is entitled to recover the cost of the application from the tenant in the amount of \$50.00.

I also order that the amounts be deducted from the security deposit, and I order that the landlord pay to the tenant the difference of \$173.20.

The order must be served on the landlord, and may be filed in the Provincial Court of British Columbia, Small Claims Division 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 24, 2010.

Dispute Resolution Officer