DECISION

Dispute Codes MNDC, OLC, LAT, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order, an order that the landlord comply with the Act and an order authorizing him to change the locks on the rental unit. The landlord's agent L.B. appeared on her own behalf as well as on the behalf of the corporate landlord and the second agent, D.L., who was also named as a respondent.

In his application the tenant had indicated that he intended to pursue an action in Small Claims Court. At the hearing I advised the tenant that this tribunal has exclusive jurisdiction over tenancy matters and that unless his claim exceeded the monetary limit of $25,000.00, in which case he could pursue an action in the Supreme Court, he would have to bring the entirety of his claim through the dispute resolution process. The tenant confirmed that he wished to proceed.

Issues(s) to be Decided

Is the tenant entitled to a monetary order as claimed?
Should the landlord be ordered to comply with the Act?
Should the tenant be permitted to change the locks on the rental unit?

Background and Evidence

The parties agree that on or about December 11, 2009 they signed a tenancy agreement whereby the tenancy was to begin on January 1, 2010 and continue for a fixed term of one year. At that time the parties discussed a stain in the carpet of the master bedroom. The landlord's agent L.B. testified that she told the tenant that the carpet had been cleaned and that she would make one further attempt to remove the stain. The stain became the subject of numerous emails between the parties. On the same day he signed the tenancy agreement, the tenant emailed L.B. and asked what

L.B. would do if the stain could not be removed. Over the course of the following weeks there was some discussion between the parties about which bedroom the tenant was referring to and L.B. advised the tenant that the stain in the master bedroom could not be removed. In the afternoon of December 21 at 1:10 p.m. the tenant emailed L.B. and wrote as follows:

> well i don't know if i want to live with that stain, it was an issue from the start, you indicated i would be dealt with, i can forward the email communication to that effect to you, i may not wish to proceed with the lease, please advise as to the DD [reproduced as written]

L.B. responded by reminding the tenant that he had signed a lease and that there would be a penalty if he broke the lease. After another email exchange L.B. wrote to the tenant the same day advising as follows:

> I am waiting to hear from the owner of the unit as I have to take direction from him. If he does not want to release you, that is his business, and if he does not want to, I will see you at a dispute hearing under the residential tenancy act. [reproduced as written]

Also on December 21 the tenant advised L.B. that he was aware of another unit available in the building on the 14th floor and asked her what her position would be on the damage deposit. L.B. replied that she was relying on the tenancy agreement and stated that she was not prepared to renegotiate the terms of the lease. At 1:21 p.m. the tenant emailed L.B. and advised as follows:

> if the stain is not dealt with i will not proceed with the lease and i will expect the DD returned in full. [reproduced as written]

On December 21 at 2:07 p.m. L.B. emailed the landlord and advised that she would contact the owner of the unit to "see what he says about letting you out of your lease" and advised that she would have to keep the deposit.

On December 23 at 9:47 a.m. the landlord's agent D.L. emailed L.B. and the tenant and wrote as follows:

> I will assume that we will be seeking our remedy at arbitration. I would expect that we will win our monetary order against this individual and further I would suggest that you act for the owner at court to get a judgment and garnish his wages.

On the same date at 11:05 a.m. the tenant emailed D.L. and advised that he would be moving into the unit on December 28. The tenant received an email confirmation that that email had been delivered. The following day, December 24, the tenant emailed L.B. advising that he would be moving in on the 28th and expressing his concern that the move-in had not been booked.

L.B. testified that she understood the tenants' two emails which are reproduced above to amount to his notice that he did not intend to fulfill the tenancy agreement and at that time cancelled the booking for the elevator, which she had previously booked for the tenant's move-in date of December 28. L.B. testified that she did not receive the December 24 email until December 30 and that while she was the manager on call during the Christmas holidays, she did not access the office to check her email.

The tenant testified that he arrived at the building on December 28 with his professional movers and that while he had keys to the building and rental unit, the caretaker required him to show him the tenancy agreement as there was no record that he would be moving in on that date. The tenant testified that it took him approximately 45 minutes to locate the tenancy agreement. The caretaker telephoned L.B. who told him that he should refuse entry to the tenant. Upon seeing the lease, the caretaker granted the tenant entry to the building. The tenant further testified that after the caretaker's conversation with L.B., he and the caretaker went together to the storage locker which was assigned to the unit and was part of the tenancy agreement. The locker was full of what the tenant believed were the belongings of a previous tenant. The tenant assisted the caretaker and together they emptied the storage locker so the tenant could deposit his belongings therein. L.B. telephoned the tenant on December 28 and left a message in which she advised that she thought he had cancelled the contract, advising him not to unpack and stating that she would be attending at the Residential Tenancy Branch the following day. The tenant identified this telephone message as Threat #1.

The tenant testified that when he entered the rental unit he discovered that the unit was covered with a layer of dust, that there was a residue of glue in the drawers and a number of stains in the cupboards. The tenant provided photographs of the condition of the unit and claimed to have spent 3-5 hours cleaning the unit.

After the tenant had moved into the unit, the parties engaged in email and telephone discussions about conducting an inspection of the unit. The tenant refused to permit L.B. access to the unit to perform a condition inspection of the unit and while the both L.B. and D.L. attempted to arrange for an inspection and provide legal, written notice of entry, the tenant continued to deny them access. On January 5 a number of emails were exchanged between the parties including one in which L.B. suggested that the tenant had caused the stains on the carpet of which he complained. L.B. advised the tenant that she would be posting a notice of entry and suggesting that the tenant contact the Residential Tenancy Branch to obtain information about the rights of landlords and tenants. The tenant replied to this email by calling L.B. a B**ch and demanding that she stop harassing him and arrange for another party to do an inspection. L.B. replied to this email by advising that she would be seeking an immediate order of possession. The tenant identified this email as Threat #2.

On January 7 the tenant advised the D.L. via email that he would not permit access to L.B. on the date indicated in her notice of entry. D.L. replied to this email advising that he would accompany L.B. on the inspection. The tenant replied by saying that he would not permit L.B. to enter and would deny entry to anyone who was with L.B. Further emails were exchanged on that date, with D.L. threatening to bring the R.C.M.P. with him to the suite and accusing the tenant of being a trespasser and not occupying the premises pursuant to a signed lease. In one email, D.L. advised the tenant that he would comply [with the notice of entry] or would need to start packing. The tenant identified this as Threat #3. The earlier email in which D.L., called the tenant a trespasser is identified as Threat #4.

The tenant provided receipts showing that paid for professional carpet cleaning for both bedrooms in the rental unit, the first on January 11 and the second on February 15.

The invoices reflect that the treatment was for stains which had reappeared from previous cleanings. The tenant submitted photographs of the unit at the time he moved in and after each of the cleanings.

The tenant seeks to recover the cost of cleaning the rental unit, carpet cleaning, the cost of photocopying and compensation for each of the threats uttered by the landlord's agents as well as punitive damages against the landlord's agents. The tenant also seeks compensation for the time he spent clearing the storage locker and for the delay in his move-in. The tenant further seeks permission to change the locks on the rental unit and an order that the landlord comply with the Act.

L.B. indicated that she would like an immediate order of possession as the tenant had refused to permit the landlord to perform a condition inspection and requested that I order the tenant to participate in an inspection. At the hearing I advised the landlord that because she did not serve the tenant with a notice to end tenancy and did not make a formal claim against the tenant, I could not grant her an order of possession and that while I could not order the tenant to participate in an inspection, because the tenant had refused to comply with the Notice of Final Opportunity to Schedule a Condition Inspection, the tenant has likely extinguished any claim against the security deposit pursuant to section 24 of the Act.

Analysis

Having reviewed the email correspondence, which I find to be the most reliable record of the interactions between the parties, I find that there was no clear communication by the tenant that he would be breaching the contract, but merely a suggestion that he would breach the contract *if* the landlord failed to remove the stain from the carpet. I find that L.B. gave the tenant the impression that she would be advising him whether or not he would be released from the terms of the contract and that she failed to so advise in a timely manner. Even if the tenant had clearly stated that he intended to breach the contract, I find that L.B. did not indicate that she accepted the breach but merely advised that she would discuss it with the owner. I find that the tenant provided the landlord's agents with a definitive answer in the emails of December 23 and 24 when he

advised that he would be moving into the rental unit and at that time effectively withdrew any notice that he would be breaching the contract, which notice had not been accepted by the landlord's agents in any event. As the agents had not indicated to him that communication by email was no longer appropriate during the Christmas season, the tenant had the right to assume that the agents had received his confirmation that he would indeed be moving in. I find that the tenant was delayed in moving in because of the landlord's failure to notify the caretaker that the tenant would be moving in on December 28 and that the tenant was not only inconvenienced, but had to spent time and expend his labour emptying the storage locker. I find that an award of $100.00 will adequately compensate the tenant for the inconvenience, time and labour and I award the tenant that sum.

Although the tenant estimated that he spent 3-5 hours cleaning the rental unit, his description of the areas that had to be cleaned and the photographs he provided have persuaded me that minimal cleaning was required which could not have taken more than 20 minutes. I find this to be so insignificant and trivial that it cannot attract compensation and I dismiss the claim for compensation for the time spent cleaning.

As for the claim for the recovery of the cost of carpet cleaning, it is clear that the condition of the carpets were an issue from the beginning of the tenancy. The parties had a number of conversations about the carpet and L.B. assured the tenant that the stains would be addressed. At the hearing L.B. was adamant that there were no stains in the bedroom carpets at the outset of the tenancy. L.B. also provided an undated statement from S.S. who stated that she cleaned the carpet in the master bedroom on November 23 and completely removed the stain. L.B.'s testimony and the statement of S.S. contradict the emails of December 21 in which L.B. advised the tenant that the master bedroom carpet had been stained with tea which could not be removed despite 3 cleanings. I find L.B.'s current position that there were no stains when the tenancy began to be unreasonable and unsupportable. In another email on December 21 L.B. referred to a party at the building who had a steam cleaner, the first name of the party being the same as the first name of S.S. who stated that she had cleaned the carpet. I accept that L.B. made 3 attempts to clean the carpets and used the services of S.S. and

her home steam cleaner on at least one of those occasions, and that each time the stain reappeared. This should have alerted L.B. that the method she was employing was ineffective. I accept the evidence of the tenant that after two professional treatments the stain was completely removed. Although L.B. disputed that there was a stain in the carpet of the second bedroom, as her testimony with respect to the carpet stains has been completely inconsistent, I prefer the testimony of the tenant and find that the second bedroom carpet required cleaning as well. I find that the tenant is entitled to recover the cost of two professional carpet cleaning services and I award the tenant $157.50.

I do not find that the landlord's agents have harassed or threatened the tenant. While both parties engaged in inappropriate, immature and unprofessional behaviour, I do not find that this behaviour amounts to harassment or threatening. The landlord's agents were merely indicating that they would pursue legal remedies to evict the tenant and while they expressed themselves poorly, a warning that eviction may be pursued, particularly when a tenant is refusing to permit the landlord lawful access to the rental unit, should reasonably have been expected. I find that the tenant had no reason or right to deny the landlord's agents, including L.B., access to the unit and I note that his behaviour towards the landlord's agents has been abusive and inappropriate, which likely led them to respond in anger rather than with the degree of professionalism one would expect. The claim for compensation for threatening behaviour is dismissed.

There is no indication whatsoever that the landlord's agents have attempted to access the rental unit illegally. I therefore dismiss the tenant's claim for an order permitting him to change the locks to the rental unit.

It is clear that the behaviour of both L.B. and D.L. was unprofessional at times, particularly when D.L. accused the tenant of trespassing when he was well aware that a signed tenancy agreement was in place. L.B. attempted to bar the tenant from moving into the rental unit which was in direct contravention of the tenancy agreement and the Act, but thankfully was unsuccessful in doing so. These events are in the past and I am unable to find that the landlord's agents are currently failing to comply with the Act. I

therefore dismiss the tenant's claim for an order that the landlord comply with the Act. Because the landlord's agents have told the tenant a number of times that he would be summarily evicted from the rental unit, implying that no notice would be given, I find it appropriate to remind the agents that in order to evict the tenant they must provide him with a notice to end tenancy pursuant to sections 46, 47 or 49 of the Act or proceed with an application for an order for an early end to tenancy pursuant to section 56 of the Act. The agents may not evict the tenant without notice or, in the event that an early end to tenancy is sought, without having gone through a dispute resolution process. Included with this decision is a copy of *A Guide for Landlords and Tenants in British Columbia* which I trust will assist both parties in learning about their rights and responsibilities under the Act.

The tenant also made a claim for penalties to be assessed against the landlord, which amount to punitive damages. In *Lee v. Gao*, 1992 CanLII 876, Mr. Justice Thackray confirmed that administrative tribunals are not empowered to make an award of punitive damages. That claim is therefore dismissed.

I find that the tenant is entitled to recover the cost of the filing fee paid to bring his application and I award the tenant $50.00. The claim for the cost of photocopying is dismissed as I am not empowered under the Act to award any litigation-related expenses other than the filing fee.

Conclusion

The tenant has been awarded $307.50 which represents $100.00 compensation for his inconvenience, time and labour when he moved in, $157.50 for carpet cleaning and the $50.00 filing fee. The tenant may deduct this sum from future rent owed to the landlord.

Dated: March 10, 2010