

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for recovery of the security deposit from the landlord, for an order requiring that the landlord comply with the *Act*, regulation, or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The application claims a breach of material terms and that the landlord unreasonably withheld consent to sublet the rented unit.

The parties appeared and each gave evidence in turn with an opportunity to cross examine each other on their evidence.

The tenants vacated the rental premises on October 31, 2009, and therefore the tenancy has ended and the application for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement is hereby dismissed, without leave to reapply.

Issues(s) to be Decided

Should the landlord be required to return the security deposit, or double the security deposit in accordance with Section 38 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy began on June 23, 2009 as a fixed term tenancy to expire on June 30, 2010. Rent in the amount of \$1,450.00 was payable on the 1st day of each month, and the landlord collected a security deposit of \$725.00 as well as a pet damage deposit of \$725.00 on June 23, 2009. The landlord's agent lived next door to the rented unit.

The tenants testified that the unit required repairs when they moved in, and the landlord promised to complete those repairs, being the plumbing in the bathroom and the

electrical plug in the child's bedroom, as well as the stairs that access the entry to the unit. The bathtub leaked from the faucets and the toilet also had a leak. The landlord's nephew fixed the leak in the toilet and promised to return to fix the faucets in the bathtub, but never did return. The landlord stated that the tub required special parts which were ordered from the US in September. She stated that the part must be custom made in order to reach the pipe, and they are still waiting for this part. Her nephew who completed the toilet repairs and promised to return to fix the bathtub is a licensed plumber.

The child's bedroom has one electrical outlet that is within reach of the 2 year old child. The hole is too big to hold the mechanism in place and it hangs off the wall. The tenant bought a bigger cover, but it didn't help.

The tenants also testified that they changed some rotted boards on the stairs by adding temporary supports because the main support for the stairs was rotted, to prevent collapsing. The landlord clarified this fact by stating that the landlord paid the tenant \$100.00 to paint the stairs.

The tenants had an inspection completed by the BC Safety Authority, and a copy of the inspection report was submitted as evidence. It states that the non-compliances were to be rectified before November 23, 2009, and included that a certified contractor was to check both upper and lower suites to ensure safe installation and repair. The landlord testified that she tried to get the electrical repairs done in September, but had difficulty finding an electrician who could do so sooner. She states that the electrical repairs were done by November 1, 2009 and signed off by the inspector.

The tenants stated that the repairs were not done in a timely fashion, but they wanted to fulfill their obligation to the fixed term tenancy, so they were trying to sublet the unit. The tenant spoke to the landlord on October 18, 2009 in an attempt to discuss ending the tenancy, who said that it was an inconvenient time to talk. The tenant had, however, already started to look for another place to live. She also placed advertisements to get another renter, however, the landlord then stated that she wanted

to have the opportunity to approve prospective tenants, and told the tenants that they had better get a lawyer, which the landlord disputed at this hearing.

The only heat in the unit is a gas fireplace, which has no thermostat, only an on/off switch. Leaving it running in the “on” position causes over-heating, and leaving it in the “off” position causes the premises to get cold in the night, especially in the child’s bedroom. The fireplace has an electric fan, but it’s plugged into a faulty plug. They stated they couldn’t use an electric heater because of the faulty electrical system.

The tenant also testified that the landlord stated that she didn’t want to do the repairs until the unit was empty, but the tenants couldn’t find another tenant to sublet to while the unit was in this condition.

The landlord testified that the electrical didn’t seem to be a problem to the tenants until they wanted to move out. She stated that before signing the Tenancy Agreement, the tenants were advised that the fireplace was the only source of heat. The tenants replied that the landlord had promised to fix the problems.

The landlord further testified that by way of a letter dated October 14, 2009, a copy of which was entered as evidence, the tenants stated they wanted to move out because they could not afford the rent, not because of the repairs required to the unit. She stated that the tenants were looking for a mutual end to the tenancy, which is contained in that letter.

Further, on October 28, 2009, the landlord received an unsigned letter from the tenants dated October 27, 2009 which details the repairs required to the unit, and also gives a forwarding address. The letter claims a breach of a material term of the tenancy and also states that under section 45(3), the tenant has the right to vacate the unit “on a date that is after the date the landlord receives the notice.” The landlord states that since the copy of the letter that she received contained no signature, it is invalid. The copy entered as evidence is signed by the tenants, but the fact that the copy provided to the landlord is not signed was not disputed by the tenants at this hearing.

The tenants vacated the unit on October 31, 2009. Neither an inspection-in nor inspection-out report was completed. The landlord testified that the electrical repairs were completed by November 1, 2009. She has not tried to re-rent the unit, nor has she returned the security deposit, awaiting the outcome of this hearing. The unit is still vacant.

Analysis

Section 45(3) of the *Residential Tenancy Act* does give the tenants the right to end the tenancy effective on a date that is after the date the landlord receives the notice. However, subsection (4) goes on to say that the notice to end a tenancy must comply with the form and content of the notice under Section 52, which does require that the notice be signed in order to be effective.

Section 38 of the *Act* deals with return of the security deposit and pet deposit, and gives me no discretion with respect to ordering that the landlord is required to pay double the return of such deposits if the landlord fails to either repay it or make application for dispute resolution within 15 days of receiving a forwarding address in writing for the tenants.

I find that the landlord did breach a material term of the tenancy, and unreasonably withheld consent to sublet the unit. However, the tenants did not fully comply with Section 52 and therefore, should be required to pay one month of rent.

I further find that the landlord did not return the security deposit and pet deposit or apply for dispute resolution within the 15 days required under the *Act*, and I must order that the landlord return double the security and pet deposits to the tenants.

Conclusion

I hereby order that the landlord pay the sum of \$2,900.00, being double the amount of the deposits paid at the outset of the tenancy. I further order that the tenants pay to the landlord the sum of \$1,450.00 for one month of rent. I grant the tenant an order under section 67 for the balance due of \$1,450.00. The tenants are also entitled to recover

the \$50.00 filing fee from the landlord for the cost of this application. This order may be filed in the Small Claims Court 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 03, 2010.

Dispute Resolution Officer