

Decision

Dispute Codes: MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent or utilities, compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

There is no written tenancy agreement for this month-to-month tenancy which began on or about April 9, 2005. The tenant occupied the upstairs portion of a two storied house. Rent in the amount of \$800.00 was payable in advance on the first day of each month and did not include utilities. No security deposit or pet damage deposit was collected and there was no move-in condition inspection report completed.

On or about July 1, 2009, the landlord issued a 2 month notice to end tenancy for landlord's use of property, a copy of which is not in evidence. However, the landlord testified that the date by when the tenant must vacate the unit was 3 months after the issuance of the notice, or September 30, 2009. Following issuance of the notice the tenant verbally informed the landlord that he would likely be vacating the unit sometime in August. Subsequently, the tenant did not pay rent on August 1, 2009. Thereafter, in the absence of any written notice or verbal notice with specific dates, the tenant left the keys of the unit with the landlord before vacating the unit on August 9, 2009. The tenant did not at that time provide the landlord with a forwarding address, and it was only after phone calls by the landlord that he was able to determine the tenant's current address.

Arising from the above, the landlord claims there was no opportunity to complete a move-out condition inspection or report, despite the tenant's verbal assurances to the landlord that everything in the unit was in order. When the landlord inspected the unit he found minor damage, as well as a need for cleaning and rubbish removal. Further, the landlord claims the tenant's portion of hydro utilities remains outstanding.

The tenant takes the position that he is entitled to the equivalent of 1 month's rent from the landlord under the circumstances of the landlord's notice. Therefore, the tenant argues, rent paid for July in the amount of \$800.00 should be applied against his share of utilities.

As for cleaning and rubbish removal, the tenant did not dispute the landlord's claim that these were both necessary after he vacated the unit. However, the tenant argues that he also had to clean up after others at the unit, and he claimed there were certain deficiencies in the unit which the landlord failed to remedy.

While the parties exchanged views during the hearing on circumstances surrounding the dispute, despite their efforts, a settlement of the dispute was not achieved.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**. After being served with the landlord's notice, the tenant did not dispute the notice by making an application for dispute resolution within 15 days following its receipt. Accordingly, the tenant is conclusively presumed to have accepted that the tenancy was to end on the effective date of the notice.

Section 50 of the Act addresses **Tenant may end tenancy early following notice under certain sections**, and provides as follows:

50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Section 51 of the Act speaks to **Tenant's compensation: section 49 notice**, and provides in part as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

Section 52 of the Act addresses **Form and content of notice to end tenancy**, and provides as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Based on the documentary evidence and testimony of the parties, I find that the tenant's verbal notice of his intent to end the tenancy at some point early in August 2009, does not comply with the statutory provisions set out above in sections 50 and 52 of the Act. I further find that the tenant's withholding of any payment of rent on August 1, 2009, reflects an understanding that withholding of August's rent served to satisfy his entitlement to compensation pursuant to section 51 of the Act.

In the result, while I find that the tenant is responsible for paying rent for August, I further find that this responsibility is offset by his entitlement to compensation pursuant to section 51 of the Act. Following from this, I find that the tenant is not entitled to have his share of unpaid utilities offset by his payment of rent for July.

Based on the documentary evidence and testimony of the parties, and with insufficient evidence to the contrary, I accept the landlord's calculations as to the amount of the tenant's share of hydro utilities of \$1,315.81.

While the landlord submitted photographs but no receipts or a detailed breakdown of time spent cleaning and removing rubbish from the unit, the tenant did not dispute that some cleanup was required after he vacated the unit. Accordingly, I find it is reasonable to conclude that the landlord has established entitlement to \$100.00 of the \$400.00 amount claimed.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the landlord's claim for reimbursement of legal fees is dismissed.

As the landlord has largely succeeded in his claim, I find that he is entitled to recovery of the \$50.00 filing fee.

In summary, as for the monetary order, I find that the landlord has established a claim of \$1,465.81. This is comprised of \$1,315.81 in unpaid utilities, \$100.00 for cleaning and rubbish removal, in addition to the \$50.00 filing fee.

Conclusion

Following from the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,465.81**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 6, 2010

Dispute Resolution Officer