

Decision

Dispute Codes: OPR/OPC/OPB, CNC/CNR/CNB, MND, MNR, MNDC, MNSD, AS, RR, FF

Introduction

This hearing dealt with two applications: i) by the landlord for an order of possession, a monetary order as compensation for damage to the unit, compensation for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee; ii) by the tenants for cancellation of the notice(s) to end tenancy, a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, authority to assign or sublet because the landlord's permission has been unreasonably withheld, authority to reduce rent for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee. The landlord, the tenants and one current occupant of the unit participated in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from April 1, 2009 to March 31, 2010. Rent in the amount of \$1,400.00 was payable in advance on the first day of each month. A security deposit of \$700.00 was collected on March 25, 2009.

In the absence of any evidence of written consent from the landlord, the tenants vacated the unit and sublet it to "LS" and "BE" on or about January 23, 2010. The tenants collected what was referred to in the hearing as a "security deposit" from "LS" in the amount of \$700.00. Rent was collected by the landlord to the end of February 2010.

Thereafter, rent was not paid directly to the landlord by the tenants, and the landlord issued a 10 day notice to end tenancy for unpaid rent dated March 2, 2010, in addition to a 1 month notice to end tenancy for cause dated March 2, 2010. The landlord delivered these two notices to “LS,” who agreed to give them to the tenants. During the hearing the tenants acknowledged receiving both notices within several days after March 2, 2010.

“LS” testified during the hearing that she remains ready to pay rent to the landlord for March and April 2010, and that she is receptive to discussing with the landlord the possibility of entering into a formal written tenancy agreement.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and persevered in efforts to achieve a resolution.

Analysis

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that the tenants vacated the unit and effectively sublet it to “LS” and “BE” on or about January 23, 2010;
- that the landlord has collected all rent due to the end of February 2010;
- that the tenancy between the landlord and the tenants is now concluded effective March 31, 2010, which is the end date of the fixed term pursuant to the written tenancy agreement; that the landlord now has possession of the unit in relation to that tenancy;
- that the landlord will retain the tenants’ security deposit in the full amount of \$700.00;

- that the landlord waives any further claim against the tenants for compensation arising from the tenancy;
- that the tenants waive any further claim against the landlord for compensation arising from the tenancy;
- that the tenants will meet with "LS" by no later than midnight, Thursday, April 29, 2010, at which time they will reimburse her in the full amount of \$700.00; pursuant to this aspect of the agreement, a monetary order for \$700.00 will be issued in favour of "LS;"
- that the landlord and "LS" will meet by no later than midnight, Friday, April 30, 2010, at which time "LS" will pay the landlord \$2,800.00 for rent combined for March and April 2010 (\$1,400.00 x 2); pursuant to this aspect of the agreement, a monetary order for \$2,800.00 will be issued in favour of the landlord;
- that at the above meeting between the landlord and "LS," the parties will consider the possibility of entering into a formal written tenancy agreement, with the parties to a prospective agreement being the landlord, "LS" and "LS's" partner, "BE;"
- that at the above meeting between the landlord, "LS" and "BE," the landlord may require that "LS" and "BE" complete an application for tenancy document;
- that the above particulars comprise full and final settlement of all aspects of the dispute arising from this tenancy for all concerned parties.

As the landlord and the tenants took an opportunity to settle the dispute during the hearing, their respective applications to recover the filing fee are hereby dismissed.

The attention of the parties is drawn to section 72 of the Act which 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. Such costs include, but are not limited to, time spent preparing for a hearing, or materials and supplies purchased in association with making an application for dispute resolution.

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/

Conclusion

I hereby order the parties to comply with the terms of the agreement, as set out above.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of "LS" for **\$700.00**, and in favour of the landlord for **\$2,800.00**. Should it be necessary, a monetary order may be served on the relevant party, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 26, 2010

Dispute Resolution Officer