DECISION

Dispute Codes OPR, OPC, MND, MNR, MNDC, FF, MT, CNC, RR

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order and a cross-application by the tenants for an order setting aside a notice to end this tenancy, more time to make the application to dispute that notice, a monetary order and an order permitting them to reduce their rent. The landlord and two of the tenants participated in the hearing. The third respondent, G.R., did not participate in the hearing despite having been personally served with the application for dispute resolution and notice of hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy has been ongoing for 3 years and up until March 2010, the tenants J.K. and D.E. were obligated to pay $950.00 per month in rent. The parties further agreed that G.R. moved into the rental unit in March 2010 and that the parties agreed that an additional $100.00 per month would be payable. The parties further agreed that G.R. vacated the unit at the end of March and that the rent at that time reverted to $950.00 per month.

The parties further agreed that on February 28 the tenants were personally served with a one month notice to end tenancy for cause (the “Notice”). The tenants did not dispute the Notice until March 15 and requested an extension of time to file their claim to dispute the Notice. The tenant J.K. stated that she did not know why she did not file her

application within 10 days, but claimed that it may be because she is agoraphobic. The tenant D.E. stated that he was letting J.K. handle the Notice.

The parties further agreed that the tenants are currently $645.00 in arrears.

The landlord testified that the tenants have kept a significant amount of items, garbage and debris outside the rental unit and that in November they gave the tenants written notice to clean the property. The landlord verbally reminded the tenants on several occasions that the items which had collected needed to be removed. On February 1 the city advised the landlord that the property had to be cleaned by February 15 in order to avoid legal action. On February 12 the landlord hired a truck and excavator to clean the property at a cost of $600.00. Seven loads of debris were taken to the landfill over the next several days. The landlord provided photographs of the exterior of the rental unit and invoices from the landfill. The landlord testified that he was unable to obtain an invoice for the dump truck and excavator. The tenants testified that they had asked the landlord to give them money so they could hire a garbage bin for the metal but the landlord refused. The tenants argued that the landlord would not have needed to spend so much money for the dump truck and excavator if he had just given them money for a garbage bin. The landlord seeks to recover $600.00 for the use of the dump truck and excavator and $1,233.16 for the cost of dump fees.

The tenants testified that the hot water tank in the rental unit had to be replaced with an electric tank because the original tank was fuelled by natural gas and could not operate after the gas company shut off natural gas supply to the property when a leak developed. The tenants testified that they replaced the tank several times and seek to recover the cost of the replacement tanks. The landlord testified the natural gas to the unit was shut off because the tenants failed to pay the gas bill. The landlord stated that at the beginning of the tenancy, there was another occupant in the rental unit, G.M. who offered to replace the tank with an electric tank and that the landlord paid him $50.00 to do so. The tenants denied that the landlord paid G.M. any amount of money, although they acknowledged that G.M. was the party who replaced the gas tanks.

The tenants seek an award of $650.00 for food which spoiled because the hydro to the unit was cut off and the refrigerator could not operate. The tenants testified that on or about February 21 the police raided the unit and called in the fire department, who arranged for the hydro to the unit to be cut off. The tenants claimed that the power was cut off because of an extension cord which the landlord had running from the house to the garage. The tenants reported the disconnection to the landlord on February 25. The landlord testified that as soon as he found out about the disconnection, he worked with BC Hydro, various safety officers and his MLA to have the unit reconnected. Hydro service was restored on March 12.

The tenants seek an award of $700.00 for clothing and linens they claim to have lost as a result of the landlord's negligence. The tenants testified that there were leaks in the rental unit which caused their clothes and linens to mould and that when the hydro was cut off, they had a lot of wet clothing which could not be dried. The landlord took the position that the tenants were responsible for the hydro having been disconnected and therefore should have to bear the consequences of any loss flowing therefrom.

The tenants seek a further award of $250.00 for hydro as this is the portion of their rent that is attributed to hydro payments and they did not have hydro service for three weeks. The tenants claim that the hydro was shut off because the rental unit's wiring was deficient. The landlord presented evidence showing that in September 2008 the rental unit passed an electrical inspection.

Analysis

The landlord made his application against all three of the parties who were occupying the rental unit in March. I find that G.R. cannot be considered a tenant, but an occupant. I have arrived at this decision because the parties agreed that an additional $100.00 per month would be payable as long as G.R. resided in the unit, but that he could vacate at any time without notice, at which time the additional sum would no longer be payable. This in my view is an arrangement which permitted additional occupants but did not create a tenancy between G.R. and the landlord, so G.R. cannot be held jointly and severally liable for debts owed by the tenants to the landlord.

I find that the Notice was personally served on the tenants on February 28. Section 47(4) of the Act required the tenants to dispute the Notice within 10 days of having received it. In this case, the tenants did not dispute the Notice until 15 days after receipt. Section 66(1) permits me to grant an extension of time only where exceptional circumstances have come into play. At the hearing I advised the tenants that they had failed to establish that exceptional circumstances existed and I denied their request for an extension of time. The landlord stated that he was willing to extend the effective date of an order of possession to May 15 to give the tenants adequate time to move and indicated that he would be willing to withhold enforcement of the order until the end of May if the tenants gave occupational rent for the entire month of May. I grant the landlord an order of possession effective May 15, 2010. If the tenants fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court. The tenants' claim for an order setting aside the notice to end tenancy is dismissed.

As the parties have agreed that the tenants are currently $645.00 in arrears in rent, I award the landlord $645.00 for unpaid rent. The landlord is also awarded $50.00 recovery of the filing fee paid to bring this application for a total award of $695.00. I grant the landlord a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The order is not effective as against G.R. as I have found that he is not a tenant.

I find that the need to replace the hot water tank in the rental unit was due to the fact that the tenants failed to pay their hydro bill and the existing tank could not function. In the absence of proof that G.M. was not paid for replacing the tank, I find that the landlord paid G.M. to replace the tank. The tenants' claim is dismissed.

I find no evidence to persuade me that the hydro to the unit was cut off because of the fault of the landlord. I do not accept the tenant's argument that the unit was poorly wired, particularly in light of the landlord's evidence that the unit passed an electrical

inspection in September 2008. I therefore dismiss the tenants' claim for compensation for lost food and for reimbursement of utilities.

I also dismiss the tenant's claim for loss of clothing and linens due to an alleged leak in the plumbing. The tenants provided absolutely no evidence to corroborate their claim that there was a leak or that they advised the landlord that a leak existed and requested a repair.

Conclusion

The tenants' claim is dismissed in its entirety. The landlord is granted an order of possession and a monetary award for $695.00.

Dated: April 22, 2010