

Decision

Dispute Codes: MNDC, OLC, LRE, RR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, an order instructing the landlords to comply with the Act, regulation or tenancy agreement, an order suspending or setting conditions on the landlords' right to enter the rental unit, permission to reduce the rent for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenants are entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on August 1, 2007. Currently, rent in the amount of \$1,250.00 is payable in advance on the first day of each month. A security deposit of \$625.00 was collected on July 10, 2007.

Matters in dispute include, but are not necessarily limited to, allegations that temporary discomfort from inadequate heating resulted from a broken furnace; that the landlords failed to provide the tenants with emergency contact particulars; that despite assurances to the contrary, other renters in the 4-plex were given access to the laundry facilities; that, arising from the foregoing, hot water had occasionally been in short supply; that water back-up and resulting cleanup and construction activity in the unit created discomfort and inconvenience; that improper notice had in the past been given on occasions when the landlords and/or the landlords' realtor wanted access to the unit

in relation to marketing and sale of the house; and that without the tenants' permission the landlords and/or their realtor posted pictures on the website of the interior of the unit intended for the purpose of advertising the unit for sale.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a partial resolution.

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/

For future reference, the attention of the parties is drawn to section 33 of the Act which addresses **Emergency repairs**, and provides in part, as follows:

33(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act speaks to **Landlord's right to enter rental unit restricted**, and provides in part as follows:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Residential Tenancy Policy Guideline # 7 addresses "Locks and Access" and states, in part:

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

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 partial resolution. Specifically, it was agreed as follows:

- that the landlords will post a schedule in the laundry facilities area showing designated times for use of the facilities by residents in each of the 4 units;
- that unless mutually agreed to the contrary, the tenants' designated use time will be as follows:
 - i) Wednesdays: 6:00 p.m. to 9:00 p.m.

ii) Sundays: 9:00 a.m. to Noon

- that the landlords will post a sign in the laundry facilities area reminding all users to lock the door upon leaving the area;
- that pursuant to the provisions set out in section 29 of the Act, the landlords will provide written notice to the tenants on those occasions when the landlords and/or their realtor wish to show the unit to prospective buyers;
- that, related to the foregoing, the landlords will limit the times when they wish to access the unit, to those occasions when they have received a written offer to purchase;

Based on the documentary evidence and testimony of the parties, I find that the tenants have established entitlement to compensation for a combination of i) a breach to the right to quiet enjoyment, and ii) for services agreed upon but not provided. While this entitlement arises in part from improper notice given by the landlords to enter the unit, I also note that the parties have habitually communicated with each other by e-mail and by telephone/voice mail messages. Further, it is not apparent there is a pattern whereby the landlords failed to reply by e-mail to the tenants' various concerns in a timely fashion.

The entitlement to compensation also arises in part from discomfort and inconvenience experienced by the tenants, which resulted from water back-up and subsequent cleanup and construction activity in the unit. I note that the problem does not appear to be the result of negligence on the part of the landlords, and other residences in the area were also affected. I also note the landlords' evidence that cleanup and construction were undertaken "on week days between 10am and 2pm 1 to 2 days per week," and that there was "no night or weekend work or work during inappropriate hours."

Further entitlement to compensation arises from website posting of interior photographs taken of the unit without the tenants' consent.

Finally, I find that entitlement to compensation derives from the failure of the furnace, and the discomfort and inconvenience resulting from temporarily being without heat before heaters were made available.

I find there is insufficient evidence to support a claim for compensation on the basis of an inadequate supply of hot water. I also find there is insufficient evidence to support a claim that the landlords breached the tenancy agreement by allowing access to the laundry facilities by other residents in the 4-plex.

Residential Tenancy Policy Guideline # 6 addresses “Right to Quiet Enjoyment,” and provides in part:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

The Supreme Court has decided that arbitrators have the ability to hear claims in tort, and that the awarding of monetary damages might be appropriate where the claim arises from the landlord’s failure to meet his obligations under the Legislation. Facts that relate to an issue of quiet enjoyment might also be found to support a claim in tort for compensation in damages. An arbitrator can award

damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

Following from all of the above, I find that the tenants have established entitlement to a claim of \$416.70, which is the equivalent of 10 days' rent. This amount is calculated as follows:

$\$1,250.00 \text{ (monthly rent)} \div 30 \text{ (average number of days in a month)} = \41.67

$\$41.67 \text{ (daily rent)} \times 10 \text{ (days)} = \underline{\$416.70}.$

While the tenants have achieved some success with this application, as the parties negotiated a settlement between them of some aspects of the dispute, I find that the application to recover the filing fee is limited to \$25.00, or half the amount claimed.

Conclusion

I hereby order the landlords to comply with the terms of the agreement reached between the parties during the hearing, as above.

Following from the above, I hereby order that the tenants may withhold **\$441.70** (\$416.70 + \$25.00) from the next regular payment of monthly rent.

DATE: May 10, 2010

Dispute Resolution Officer