

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened to deal with the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of this application.

The parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on August 15, 2007 and ended on February 15, 2008. Rent in the amount of \$850.00 was payable in advance on the 15th day of each month, and there are no rental arrears. On August 9, 2007, the landlord collected a security deposit from the tenants in the amount of \$425.00, which was returned to the tenants.

The rented unit is a basement suite in a house that also has tenants in the upstairs portion. One of the tenants is a medical student, and was a medical student at the time that the tenants resided in this unit. The tenants moved to this unit in Vancouver from Penticton, B.C.

The tenants testified that the landlord had listed the house for sale, but it didn't sell, and the parties had a discussion about a long-term tenancy.

The tenancy agreement states that no smoking is permitted in the unit, and no pets are permitted, however they discovered that the tenants in the upper unit had dogs.

The tenants further testified that in mid-September, 2007, the landlord told them they could store some of their belongings in the garage because their rental unit was very small, then in December, the landlord told them they had to move their belongings out of the garage because the tenants upstairs needed the garage space. They were also served with a 2 Month Notice to End Tenancy for Landlord's Use of Property which stated, "The rental unit will be occupied by the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

They complied with the landlord's order by moving their belongings into the back yard. The tenants are family members, one being a student and they had little money and did not have the money to rent a storage unit.

The tenants also provided evidence of a dispute resolution hearing conducted between the parties on February 7, 2008 wherein the tenants had applied for an order cancelling the Notice to End Tenancy, among other claims, and the Dispute Resolution Officer ordered that the Notice to End Tenancy be set aside and that the tenants were not required to pay rent for the period of January 15, 2008 to February 15, 2008. That Decision, a copy of which was provided in advance of the hearing, also stated that the tenants led evidence about damage to personal property, however the application did not include such a claim and therefore, the tenants were required to make a further application with respect to that claim.

On February 15, 2008, the tenants had to hire a truck to take their items that had been sitting outside to the dump because of damage and rat droppings. The tenants provided photographs of the items destroyed as well as receipts and/or proof of the value of the items lost and moving expenses paid. Those claims are as follows:

- \$406.99 to move the items from Penticton to Vancouver;
- \$650.00 for a living room coffee table;
- \$150.00 for the truck to take away the damaged property;

- Several receipts for medical text books from bookstores in Vancouver and the Okanagan, totalling \$944.50, including taxes;
- The cost of laboratory coats, which the tenant testified she lost 5 at \$22.00 each + \$1.35 for taxes.

The items total \$2,268.24. The tenant also testified that she also lost laboratory equipment, such as beakers, a stethoscope and nursing equipment which were purchased before they moved into the unit. The tenant testified that these items total about \$1,200.00 in replacement cost however she does not have the receipts to support that amount.

The landlord testified that she had asked the tenants upstairs if the tenants downstairs could use a portion of the garage for storage for a couple of weeks, but did not remain on the conference call to provide any further evidence. When asked if the tenants were given any notice that they could no longer use the storage space, the landlord refused to answer.

Before concluding the hearing, I asked the landlord several times if she had any further evidence or any cross examination of the tenants, but she did not reply. I confirmed with her at one point if she could hear me, and she responded in the affirmative, however did not provide any further evidence. I asked several times if she could hear me, and she declined to answer. I further confirmed with the tenants if they could hear me and they responded in the affirmative. The landlord refused to answer any questions or provide any further testimony and disconnected herself from the conference call hearing.

Analysis

I find that the landlord did cause the tenants to lose the items by failing to give any notice to remove the items from storage after permitting them the use of a space in the

garage. I also find that the items were damaged and rendered unusable as a result. The landlord made no effort to provide any other storage space.

In order to be successful with a claim for damages, the onus is on the claiming party to prove:

1. That the damage or loss exists;
2. That the damage or loss occurred due to a breach of the Residential Tenancy Act or the tenancy agreement by the other party;
3. The amounts claimed;
4. What efforts the claiming party made to mitigate, or reduce the damages.

I find that the evidence before me satisfies elements 1 and 2, however, only some evidence is before me that proves the amounts. The tenants provided photographs of some of the items and of boxes that had been torn open by rodents, and I accept the evidence of the tenants that the boxes contained the text books and laboratory coats. The tenants, however, have not provided receipts to corroborate the claim for \$22.00 per coat + taxes.

Conclusion

For the reasons set out above, I hereby order that the landlord reimburse the tenants the amount of \$2,151.49

The tenants are also entitled to recover the filing fee from the landlord for the cost of this application in the amount of \$50.00.

I order, pursuant to Section 67 of the *Residential Tenancy Act* that the landlord pay to the tenants the sum of \$2,201.49. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: June 04, 2010.

Dispute Resolution Officer