

Decision

Dispute Codes: MNDC, 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, and recovery of the filing fee. The tenants participated in the hearing and gave affirmed testimony.

Despite registered mailing of the application for dispute resolution and notice of hearing (the “hearing package”), the landlord did not appear. While Canada Post online tracking confirms that the landlord did not pick up the hearing package from the post office, pursuant to the Act the landlord is deemed to have been served.

Issues to be decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the year-long fixed term of tenancy was from December 1, 2009 to November 30, 2010. Monthly rent was \$1,600.00, and a security deposit of \$600.00 was collected on October 20, 2009.

As the tenants had made plans to be away from the country from November 10 to 30, 2009, they reached an agreement with the landlord whereby at no cost, they would store their possessions in the unit during November and before occupying the unit from on or about December 1, 2009. Accordingly, the tenants stored their possessions in the unit on November 2, 2009, and then returned the unit keys to the landlord.

On November 3, 2009, the landlord contacted the tenants to inform them he had decided to sell the house and wished to end the tenancy early. On November 9, 2009,

the parties entered into a written agreement termed the “End of Tenancy Agreement (Lease Breakage) Notice by Landlord” (the “Agreement”). Pursuant to the Agreement, the essence of terms agreed to between the parties includes, but is not necessarily limited to the following:

- that the tenants will store their possessions in the unit from November 2, 2009 to January 4, 2010;
- that as the tenants will not occupy the unit, the tenants will not be liable for any rent or utilities during the period of storage;
- that the landlord will refund the tenants’ security deposit;
- that the landlord will “provide moving and/or bear all expenses / costs incurred for moving...to any new residential property...”
- that “the landlord agrees to pay one month rent i.e. the amount of \$1,600.00 no later than January 4, 2010 or the date when the tenants remove their belongings from the property whichever comes earlier, as a compensation for breaking the one-year fixed tenancy agreement originally intended to end on November 30th 2010.”

Thereafter, the tenants contacted the landlord on December 1, 2009 to confirm that they had returned to the country. Later, on December 17, 2009 the tenants contacted the landlord to inform him they had found an alternate rental property, and the parties agreed that on December 20, 2009, the tenants’ possessions would be removed from storage in the unit and moved to the new rental property.

However, during the conversation on December 17, 2009, the landlord also informed the tenants that he had decided he would not pay compensation in the amount of \$1,600.00 as earlier agreed in the Agreement. Further, the landlord informed the tenants that his friends would assist them to relocate their possessions on December 20, 2009, and that a professional mover would not be hired. Thereafter, the tenants’

possessions were successfully relocated and the landlord repaid the security deposit to the tenants.

In their application the tenants seek a monetary order in the amount of \$1,650.00, comprised of \$1,600.00, which is equivalent to one months' rent and the specific amount of compensation agreed to between the parties, plus the \$50.00 filing fee.

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/

Based on the documentary evidence and undisputed testimony of the tenants, I find that for all intents and purposes the tenants were served with a 2 month notice to end tenancy for landlord's use of property. In this regard, section 49 of the Act addresses **Landlord's notice: landlord's use of property**.

Further, 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.

I find that the tenants' use of the unit for storage of their possessions at no cost from November 2 to December 20, 2009, does not constitute "the equivalent of one month's rent payable under the tenancy agreement." Again, the tenants were not given keys for access to the unit during this time after their possessions had been stored, and pursuant to the Agreement the tenants did not ever occupy the unit, despite the fact that a tenancy agreement had been entered into on October 20, 2009.

In the result, I find that the tenants have established a claim of \$1,650.00, as detailed above, and I therefore grant the tenants a monetary order under section 67 of the Act for this amount.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of \$1,650.00. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: June 24, 2010

Dispute Resolution Officer