DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

The Tenants said they served the Landlords in person on February 18, 2010 with a copy of the Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Tenants, I find that the Landlords were served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords' absence.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on January 16, 2009 and ended on January 31, 2010. Rent was $1,000.00. The rental unit is located in a former club house on a driving range. Under the terms of the tenancy agreement, the rental unit was a 2 bedroom suite that was formerly used as the caretaker's suite.

The Tenants said that prior to entering into the tenancy agreement, the Landlords advised them that the driving range would be demolished at some future date and developed. The Tenants said that approximately 2 months after they moved in, they discovered that the hydro meter for the rental unit was located in an electrical building on the driving range. The Tenants also said that in July of 2009 the Landlords advised them that once the driving range was demolished they would not have hydro to the rental unit but that the Landlords would have hydro re-installed at the rental unit prior to the driving range being demolished.

The Tenants claimed that the Landlords later told them that they would not have the hydro reconnected to the rental unit and that it would be cheaper to compensate the Tenants to find a new residence. However, the Tenants said the Landlords did not know when the driving range would be demolished and they wanted the Tenants to stay until they knew when the demolition would occur. The Tenants said the Landlords initially agreed to help them find a new residence, pay for their first month's rent and security deposit, give them the use of a large van to move their household articles and pay for expenses such as fuel. The Tenants said the Landlords advised them in early January 2010 that the driving range would be demolished later that month and also advised the Tenants that they would have to find another residence themselves. The

Tenants also said that the Landlords again advised them of their intention to compensate the Tenants but could not afford to do so at that time.

The Tenants argued that they would not have entered into the tenancy agreement had they known that the rental unit would not have hydro once the driving range was demolished. The Tenants said their first month's rent at their new residence was $1,150.00 (which does not include utilities) and their security deposit was $575.00. The Tenants also said that they rented a moving van for $300.00 and had to pay $100.00 for fuel.

The Tenants also sought to recover $75.00 for utilities. The Tenants said that on September 14, 2009, the Landlords held an engagement party for their daughter in another area of the club house. The Tenants said the Landlords agreed to compensate them $100.00 for the additional use of hydro for three days. The Tenants said they were charged commercial rates by BC Hydro instead of residential rates. The Tenants also claimed that the Landlords repeatedly put them off when they requested payment.

Analysis

Section 27 of the Act says that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement." RTB Policy Guideline #8, Unconscionable and Material Terms states at p. 2 that "a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement."

At common law, if a party makes a material misrepresentation that induces another party to enter into an agreement, it may be grounds for the other party to set aside that agreement and to claim compensation for damages. In this case, the Tenants argued that they would not have entered into the tenancy agreement had they known that the rental unit would not have hydro once the driving range was demolished. The Tenants also claimed that the Landlords chose not to reconnect the hydro to the rental unit due to the cost but instead chose to compensate them.

I find that the provision of hydro to the rental unit was essential to the Tenants' use of the rental unit as living accommodations and was also a material term of the tenancy agreement. I also find that the Landlords' decision to terminate this service or facility was a breach of s. 27 of the Act and also a breach of a material term of the tenancy agreement. I further find that the Tenants would not have entered into the tenancy agreement had they known that on the demolition of the driving range that there would be no hydro to the rental unit. Consequently, I find that the Tenants are entitled to the compensation they have claimed in the amount of $2,125.00 in order to put them in the same position as they would have been had they not entered into the tenancy agreement. In the absence of any evidence from the Landlords to the contrary, I also find that the Landlords agreed to compensate the Tenants for these amounts.

I further find that the Landlords agreed to compensate the Tenants for the additional use of hydro for their daughter's engagement party which they held at the rental property and I award the Tenants $75.00 for this part of their claim. As the Tenants have been successful on their application, I also find that they are entitled to recover from the Landlords the $50.00 filing fee they paid for this proceeding.

Conclusion

A monetary order in the amount of **$2,250.00** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 01, 2010.

Dispute Resolution Officer