

DECISION

Dispute Codes MNSD, FF

Introduction

This is the Tenants' application for a monetary order for compensation for damage or loss; and to recover the cost of the filing fee from the Landlords.

This matter was originally scheduled for a Hearing on May 4, 2010. The matter was adjourned to July 8, 2010, in order for the Tenants to arrange for a Japanese interpreter to be present.

Issues(s) to be Decided

Are the Tenants entitled to compensation under the provisions of Section 67 of the Act?

Background and Evidence

This tenancy started on October 1, 2006 and ended on October 31, 2009. A copy of the tenancy agreement was entered in evidence. The Tenants paid a security deposit in the amount of \$500.00 at the beginning of the tenancy. Monthly rent at the beginning of the tenancy was \$900.00 per month for the months of May to September and \$1,000.00 per month for the months of October to April. At the end of the tenancy, the Tenants paid \$1,000.00 for the months of May to September and \$1,100.00 for the months of October to April. Utilities were included in the rent.

The Tenants testified that the Landlord advised them that they had to move out of the rental unit upon discovering the female Tenant was pregnant. The Tenants testified that they were looking for a new place to live, but they did not wish to move at the end of October, because of the imminent birth of their baby and the upcoming Olympics. The Tenants stated that they felt they had to move at the end of October because the Landlords insisted. The Tenants are applying for compensation for loss in the amount of \$3,300.00 (the amount they would have been due under Section 51(1) and (2)(b) of the Act), together with moving expenses in the amount of \$1,040.00, for a total of \$4,340.00.

The Landlords testified that they believed they had a verbal mutual end of tenancy agreement with the Tenants. The Landlords testified that they told the Tenants if they couldn't find suitable accommodations for the end of October, they could stay until they did.

The Landlords testified that the security deposit, in the amount of \$500.00, was returned to the Tenants in November, 2009.

Analysis

Documentary evidence provided by the Landlords indicates that the Landlords wrote to the Tenants on August 22, 2009. In the correspondence, the Landlords indicated that they were “very concerned” about the female Tenant being pregnant. The Landlords make the following statements in this correspondence:

“There are many people who have slipped on our stairs before. We think it is in your best interest to find somewhere else to stay. If something were to happen we cannot take responsibility.”

“It is quite troubling to us to think that if something were to happen we would receive the blame.”

“It is for the above mentioned reason that when we search for tenants we are looking for couples or friends and not couples with small children or babies.”

“We feel if you had told us earlier that you are having a baby, this would have allowed you more time to find a new place.”

The Tenants asked the Landlords to sign a Notice to End Tenancy for Landlord's Use, so they could be compensated for moving out of the rental unit. On October 22, the Landlords wrote to the Tenants declining to sign a Notice to End Tenancy for Landlord's Use, and indicating (in error) that the Notice did not apply because the tenancy agreement was not for a fixed term. The Landlords state that since they “did not hear any disagreement” from the Tenants after their August 22, 2009, letter, and since the Tenants told them house-hunting was “going to be fine getting help from friends”, the Landlords believed that the Tenants had “agreed with us” to end the tenancy. The Landlords requested that the Tenants vacate the suite “by the end of 31 Oct.”

Based on the testimony and the documentary evidence, I do not find that the parties entered into a mutual end of tenancy agreement. Section 44(1)(c) of the Act provides that a tenancy may end if the **landlord and tenant agree in writing** to end the tenancy. No such agreement exists and the Tenants dispute that they agreed to end the tenancy. I find that the Landlords illegally evicted the Tenants.

Therefore, I find that the Tenants are entitled to compensation. The tenancy did not end as a result of a Notice to End Tenancy for Landlord's Use, and therefore compensation pursuant to Section 51 does not apply, however I find that the Tenants are entitled to compensation for being illegally evicted and loss of peaceful enjoyment, and I allow their claim in the amount of \$3,300.00. The Tenants did not provide proof of the cost of their moving expenses, and this portion of their claim is dismissed.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlords.

The Tenants have recovered the security deposit from the Landlords, but the Landlords did not provide the Tenants with accrued interest on the deposit. Section 38 of the Act requires a landlord to pay accrued interest on security deposits. Interest has accrued in the amount of \$15.77.

I hereby provide the Tenants with a Monetary Order against the Landlords in the amount of \$3,365.77.

It is important to note that the tenancy agreement provided by the Landlord in evidence is deficient and contains unenforceable terms. The tenancy agreement does not comply with Section 13 (a), (b), (c), (d), (e) and (f)(i). The tenancy agreement allows for a \$100.00 per month increase for six months of the year, which is contrary to Sections 42 and 43 of the Act. Copies of Sections 13, 42 and 43 accompany this Decision.

Pursuant to the provisions of Section 5 of the Act, parties may not contract outside of the Act or regulations and any attempt to do so is of no effect.

Conclusion

I hereby grant the Tenants a Monetary Order against the Landlords in the amount of \$3,365.77 against the Landlords. This Order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 08, 2010.

Dispute Resolution Officer