

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was convened by way of conference call 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.

One of the tenants appeared at the hearing, and one of the landlords attended. Each gave affirmed evidence.

Issues(s) to be Decided

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

Background and Evidence

This tenancy began on January 1, 2009 as a fixed term tenancy to expire on December 31, 2009 and then revert to a month-to-month tenancy. Rent in the amount of \$1,085.00 was payable in advance on the 1st day of each month, and there are no rental arrears.

At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$540.00, which was returned to the tenants at the end of the tenancy.

The landlords were effectively forced to sell the rental condominium by the strata corporation, or move into it. The strata had determined that there were more rentals than desirable or allowed by the by-laws, and advised the landlords that their failure to evict the tenants and remove rentals would result in a fine in the amount of \$50.00 per day for each day that the unit was rented beyond January 31, 2010. The landlords were

given such notice by the strata in the fall of 2009 and disputed it. However, they were unsuccessful and were forced to give the tenants a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlords had no intention of moving into the unit, and created their own paragraph in the notice to give the proper reason for the eviction. The landlord also testified that he did not want to evict the tenants, and that the parties had a very amicable landlord/tenant relationship.

The notice to end tenancy was given to the tenants by way of email, and then the landlord discovered an error, so delivered a new notice to end the tenancy on December 28, 2009 and left it on the dining room table in the tenant's suite. That notice had an effective vacancy date of February 28, 2010, which was well beyond the date the strata required but did satisfy the requirements of Section 49 of the *Residential Tenancy Act*. The landlords then sold the unit by the end of February, 2010.

The tenant testified that rent for the month of January, 2010 was paid at a pro-rated amount, which is not disputed by the landlord, and the tenants vacated the unit on January 16, 2010 after giving notice to the landlord. After the notice was issued to the tenants, the landlords listed the property for sale, and gave a "blanket" notice to enter the unit in order to have it shown by realtors. That notice gave certain days of the week and times that the tenants were required to allow agents to enter the unit to show it to perspective purchasers.

The tenants are claiming \$1,085.00 as compensation under Section 51 of the *Residential Tenancy Act*.

Analysis

Firstly, I find that the notice to end tenancy was not given for any of the reasons set out in Section 49 of the *Residential Tenancy Act*, however, due to the strata corporation threatening large fines, I also find that the landlord didn't have much choice, other than

to give the notice sooner than he did, but he was trying to avoid giving the notice in order to maintain the tenancy by disputing the strata corporation's decision.

The tenant did not pay for a full month's rent for the month of January, and the parties agree that the portion paid was the proper amount to be paid for the pro-rated rent to the end of the tenancy. The question before me is whether or not the tenant is entitled to compensation in addition to the pro-rated rent when the tenant vacates the unit prior to the effective date of the notice.

Section 50 of the *Residential Tenancy Act* states that once a landlord gives a tenant notice to end the tenancy under Section 49, the tenant may end the tenancy early. I refer to Sections 50 (3) and 51 (1) of the *Act*, which state as follows:

50 (3) a notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

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.

In this case, the landlord gave the notice, which I find was issued for the landlord's use of the property, and not for any other purpose, and therefore the tenants are entitled to that compensation.

Although it is not claimed in the application of the tenants, the landlord questioned whether or not he was entitled to issue a "blanket" notice to the tenants requiring them to allow real estate agents to view the property for prospective purchasers once the unit had been listed for sale. I refer the landlord and the tenants to Section 29 of the *Act*, which states that the landlord must not enter the unit for any purpose unless the tenant gives permission or the landlord gives at least 24 hours notice in writing to the tenants, or an emergency exists and entry is necessary to protect life or property. That includes real estate agents. A "blanket" notice does not suffice for the purposes of the *Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of \$1,085.00. The tenants are also entitled to recovery of the filing fee in the amount of \$50.00. This order may be filed in the Small Claims Court 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 14, 2010.

Dispute Resolution Officer