Decision

Dispute Codes: MNDC, OLC, ERP, RP, PSF, 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 / an order instructing the landlords to comply with the Act, regulation or tenancy agreement / to make emergency repairs for health or safety reasons / to make repairs to the unit, site or property / to provide services or facilities required by law / and recovery of the filing fee. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on April 15, 2010. Rent in the amount of $1,250.00 is payable in advance on the first day of each month. Both, a security deposit of $625.00 and a pet damage deposit of $625.00 were collected near the outset of tenancy. The standard form of the move-in condition inspection report was not completed at the outset of tenancy, however, collaboration between the parties led to a manual listing of various items in need of attention / repair.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlords issued a 2 month notice to end tenancy dated June 9, 2010. The notice was served by way of registered mail. A copy of the notice was submitted into evidence. The date shown on the notice by when the tenants must vacate the unit is August 31, 2010. The reason shown on the notice for its issuance is as follows:

> The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenants do not dispute the above notice and, pursuant to section 51 of the Act which speaks to **Tenant's compensation: section 49 notice**, the tenants withheld payment of rent for August 2010. The landlords do not dispute the tenants' having withheld payment of rent for August 2010. Despite all the foregoing, it is understood that the unit currently still remains listed for sale with a realtor.

Further to providing affirmed testimony, during the hearing the parties exchanged views on some of the circumstances surrounding multiple aspects of the dispute.

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/

The various aspects of the dispute and my findings around each are set out below. While all of the detailed documentary evidence and testimony have been carefully considered, only what I consider are useful aspects of the evidence and testimony will be specifically referenced here.

$102.70: *property repair purchases*. During the hearing the parties confirmed that this aspect of the dispute has been resolved; specifically, the landlords have reimbursed the tenants in the full amount claimed. Accordingly, this matter is not presently before me.

$486.84: *propane at move-out (45% fill)*. During the hearing the parties agreed that the landlords will arrange for a reading to be taken of the tank at the end of tenancy. The results of this reading will be used by the parties to resolve the matter of any costs that may be owed by one party to the other. Accordingly, this matter is not presently before me.

$2,500.00: *moving costs (in).* Based on the documentary evidence and testimony of the parties, I find there is no evidence of an agreement reached between the parties whereby the landlords agreed to incur responsibility for any portion of the tenants' move-in costs. Additionally, the tenants acknowledge that they moved themselves to the unit, and that the amount claimed arises in part from estimates, not receipts for payment, obtained from professional movers. In consideration of all the foregoing, this aspect of the claim is hereby dismissed.

$2,500.00: *moving costs (out).* Further to the comments immediately above which are also partially applicable here, as the tenants have not yet moved out, they have not incurred move-out costs. Further, as previously stated, the tenants do not dispute the notice to end tenancy. This aspect of the claim, therefore, is also hereby dismissed.

$509.60: *cost of postal fwd*. This aspect of the claim arises from costs anticipated by the tenants for having personal and business mail forwarded to a new address following the end of this tenancy. Based on the documentary evidence and testimony of the parties, I find there is no evidence of an agreement reached between the parties concerning this matter. As earlier stated, the tenants do not dispute the landlord's notice to end tenancy. Further, in the absence of an agreement between the parties to the contrary, whatever the length of a given tenancy, responsibility for the cost of forwarding mail to a new address is borne by the tenant who moves. In the result, this aspect of the claim is hereby dismissed.

The following two aspects of the claim are not entirely distinct from each other but are set out separately here for the purposes of ease and clarity.

$500.00: *house cleaning at move-in*. Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Documentary evidence and testimony includes reference to past tenants in the unit. For example, in an e-mail from the landlord to the tenant on April 14, 2010, the landlord states in part, "We have had such terrible tenants in the past…" In association with past tenants and the condition of the unit at the start of the subject tenancy, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, …

Related evidence submitted by the tenants includes photographs taken of various parts of the unit, estimates of cleaning costs provided by professional cleaners, as well as numerous e-mail communications between the parties. Further, a copy of the tenancy agreement includes the following manual notation:

New carpets are being installed in the upstairs bedroom and landing. The tenants will be responsible for any pet damage. Carpet to be replaced.

In addition to the above, the parties compiled a detailed list of items requiring attention and / or repair which includes, but is not limited to, faulty back door lock, damaged drywall, broken bi-fold door, missing blinds etc.

Based on the documentary evidence and testimony of the parties, I find there is insufficient evidence that the condition of the unit fell short of complying with "health, safety and housing standards required by law," or that it was not suitable for occupation by the tenants. However, I find the tenants have met the burden of proving on a balance of probabilities that in a range of ways the general level of cleanliness fell short

of the threshold of “reasonably clean, and undamaged.” The limited entitlement established by the tenants as a result of this finding is set out below.

$4,375.00: *reimbursement of all rent paid from April 15 to July 31, 2010*. Section 28 of the Act speaks to **Protection of tenant’s right to quiet enjoyment**, and reads:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
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> (c) exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with section 29 [landlord’s right to enter rental unit restricted];
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 speaks to “Right to Quiet Enjoyment,” and provides in part, that a breach of this right might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and on-going noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;

- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Section 29 of the Act addresses **Landlord's right to enter rental unit restricted**, and provides in part:

> 29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> > (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> >
> > (i) the purpose for entering, which must be reasonable;
> >
> > (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Residential Tenancy Policy Guideline # 7 addresses "Locks and Access" and provides in part:

> Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a “reasonable purpose” may lose its reasonableness if carried out too often.

While I find that contacts between the tenants and the landlords’ realtor and the number of actual showings, have not been “carried out too often,” I find there is evidence that notice provided by the realtor for access to the unit has not strictly and consistently complied with the statutory provisions as set out above. Specifically, notice has been given by way of e-mail and not 24 hours in advance. The limited entitlement established by the tenants as a result of this finding is included below.

Further, and in summary, miscellaneous concerns identified by the tenants during this relatively short tenancy include, but are not necessarily limited to, a general level of interior and exterior cleanliness considered to be insufficient (appliances, windows, window sills, beneath sinks, within closets, furnace air ducts etc.); a suspicious smell thought variously over time to be either leaking propane or a problematic septic system; a hot water tank in need of replacement; a leak in the roof of the master bedroom in need of repair; the uncertain quality of well water; various electrical issues; time spent and labour undertaken to remedy certain problems within and outside of the unit, including cleaning, purchase and installation of such things as floor registers, hall closet shelf clips, smoke detectors, bedroom ceiling light fixture, light bulbs and so forth; time consuming and increasingly mutually testy interactions between the parties by way of telephone and e-mail during the short period of the tenancy, and direct liaison required by the tenants with persons attending the unit for investigative or remedial purposes.

Notwithstanding the landlords’ position which appears to be that the level of rent reflects acknowledgement that certain things required attention in the unit at the outset of tenancy, based on the extensive documentary evidence and testimony of the parties, I find the tenants have established an overall entitlement to compensation in the amount of **$416.70** which is the equivalent of ten (10) days rent, calculated as follows:

[$1,250.00 ÷ 30] x 10 = $416.70

$100.00: *filing fee*. As the success achieved by the tenants in their application is limited, I find their entitlement to recovery of the filing fee is limited to **$25.00**.

In view of the issues that have already been addressed in the unit, and in light of the very limited time remaining in this tenancy, I hereby dismiss the aspect of the tenants' application concerning issuance of various orders related to repair, services and facilities.

Conclusion

Following from the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of **$441.70** ($416.70 + $25.00). Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 12, 2010

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Dispute Resolution Officer