

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, MT, CNR, RP, LRE, FF

Introduction

This hearing dealt with 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for unpaid rent or utilities / compensation for damage or loss under the Act, regulation or tenancy agreement / an order instructing the landlords to make repairs to the unit, site or property / suspension or setting of conditions on the landlords' right to enter the rental unit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to two separate written tenancy agreements, the initial fixed term of tenancy from October 15, 2008 to June 30, 2009, was followed by a second fixed term from July 1, 2009 to June 30, 2010. Rent in the amount of \$1,375.00 was payable in advance on the first day of each month. A security deposit of \$687.50 was collected on or about October 15, 2008.

Following the issuance of a 10 day notice for unpaid rent or utilities, pursuant to the landlords' application they obtained an order of possession (June 15, 2010), in addition

to a monetary order (June 15, 2010) for unpaid rent for May 2010, in the amount of \$1,375.00.

Subsequently, the tenants applied for review of the above decision and orders. In the result, by decision dated July 5, 2010, the decision and orders were confirmed. Thereafter, the tenants vacated the unit in early July 2010.

As a result of events that have transpired since the respective applications were filed, I consider that certain aspects of the tenants' application are now withdrawn; they include an application for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for unpaid rent or utilities / an order instructing the landlords to make repairs to the unit, site or property / and suspension or setting of conditions on the landlords' right to enter the rental unit.

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 remaining aspects of the tenants' claim and my findings around each are set out below.

\$4,800.00: *compensation for non-functioning fireplace*. The parties agree that the fireplace was non-functioning for the duration of what was a tenancy spanning a period of 20 ½ months (October 15, 2008 to June 30, 2010). Additionally, the parties agreed that the fireplace was not a source of significant heat for the unit and, rather, its value was principally aesthetic. Further, the parties did not apparently disagree that provision of a fireplace was included in the description of the unit when it was advertised for rent.

Based on the documentary evidence and testimony of the parties I find that the tenants have established entitlement in the amount of \$240.00*. This is calculated on the basis of \$1.00 per day, for each of the eight (8) winter months

of November & December 2008, January & February 2009, November & December 2009 and January & February 2010, calculated on the basis of an average 30 day month:

$$8 \times 30 \times \$1.00 = \underline{\$240.00}$$

\$200.00: *partial reimbursement of previous payment to landlord.* The parties testified during the hearing that the tenants had reimbursed the landlords in the amount of \$236.25 during the tenancy for costs incurred by the landlords for certain repairs undertaken in the unit. The tenant acknowledged that the commencement of proceedings arising from this current dispute led him to seek a partial reimbursement of the aforementioned costs. As this matter has previously been settled consensually between the parties, I hereby dismiss this aspect of the tenants' application.

\$50.00: *filing fee.* As the tenants have achieved limited success in their application, I find they are entitled to recover \$25.00* which is half the filing fee.

Total: \$265.00

The various aspects of the landlords' claim and my findings around each are set out below:

\$675.00*: *unpaid rent as at June 30, 2010.* Based on the agreement of the parties during the hearing, I find that the landlords have established entitlement to the full amount claimed.

\$1,375.00: *unpaid rent / loss of rental income for July 2010.* The landlords testified that the unit was advertised for sale during a period of time when the tenancy was still in full force and effect. Further, the landlords testified that their preference was to sell the unit, and that "plan 'B'" was to find new renters following the end of the subject tenancy. Ultimately, the unit was sold effective

on or about August 1, 2010. Following from all of the foregoing, there were no efforts undertaken by the landlords to mitigate the loss of rental income for the month of July, simply because the landlords had decided their preference was to advertise the unit for sale.

However, the landlords testified that they were unable to properly show the unit until after all of the tenants' possessions and discarded items left behind had been removed. Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the unit had not been completely cleared until July 9, 2010. In the result, I find that the landlords have established entitlement to **\$399.15***, which is the equivalent of 9 days' rent calculated as follows:

$$\$1,375.00 \div 31 = \$44.35$$

$$\$44.35 \times 9 = \$399.15$$

\$1,287.44*: *miscellaneous labour & repairs*. The tenant agreed in principle to a portion of the total costs claimed by the landlords, but did not agree to the full amount claimed. Based on the documentary evidence and testimony of the parties, I find that the landlords have established entitlement to the full amount claimed.

\$475.00*: *miscellaneous cleaning* (\$200.00 & \$150.00 & \$125.00). Based on the documentary evidence and testimony of the parties, I find that the landlords have established entitlement to the full amount claimed.

\$212.80*: *professional carpet cleaning*. Based on the documentary evidence and testimony of the parties, I find that the landlords have established entitlement to the full amount claimed.

\$156.77: *new pink dogwood tree*. In their documentary submissions the landlords claim "Broken in half tenants agreed to pay." However, during the

hearing the tenant disputed that he agreed to pay. Based on the conflicting evidence, I find on a balance of probabilities that the landlords have established entitlement to **\$78.39*** which is half the amount claimed.

\$100.00*: *fees for late payment of rent* (January, February, April & May, 2010: 4 x \$25.00). During the hearing, the tenant acknowledged responsibility for these fees. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

\$100.00*: *fees for NSF cheques* (June 10, April 14, May 21 & 31, 2010). During the hearing, the tenant acknowledged responsibility for these fees. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

\$100.00: *filing fees x 2*. As the landlords have mainly succeeded in this application, I find they are entitled to recover the **\$50.00*** filing fee.

As to the application to recover the filing fee with respect to a previous hearing, as that fee pertains to a separate proceeding, the opportunity to apply to recover that filing fee has passed, and the landlords' application now to recover that filing fee is hereby dismissed.

\$43.42: *miscellaneous bills, materials, Registered Mail, prints*. Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlords' application is hereby dismissed.

Total: \$3,377.78

Offsetting the above monetary entitlements against each other, I find that the landlords have established entitlement to a claim of **\$3,112.78** (\$3,377.78 - \$265.00)

I order that the landlords retain the security deposit of \$687.50 plus interest of \$2.20 (total: \$689.70), and I grant the landlords a monetary order under section 67 of the Act for the balance owed of \$2,423.08 (\$3,112.78 - \$689.70)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$2,423.08**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 19, 2010

Dispute Resolution Officer