

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from May 1, 2010 to April 30, 2011. Rent in the amount of \$1,200.00 is payable in advance on the first day of each month. A security deposit of \$600.00 was collected at the outset of tenancy.

Not all details of the respective arguments and/or submissions are reproduced here. In summary, however, concerns identified by the tenant in support of her application for compensation include, but are not necessarily limited to,

- an experience of feeling misled near the outset of tenancy in regard to the level of quietness in the building;
- an allegation that the landlord withheld information near the outset of tenancy in regard to renovations planned in the building, and the resulting noises and disruption from movement of trades people, labourers, various inspectors, machinery and materials;

- foul odours emanating from the bathtub and kitchen sink drains;
- health issues arising from dust, fumes, alleged infestations of silverfish, moths and mice, and the associated use of pesticides, and
- miscellaneous “disrepair” in the unit

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

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/

Sections of the Act which bear direct relevance to the circumstances of this dispute include, but are not necessarily limited to, Section 28 of the Act which addresses

Protection of tenant’s right to quiet enjoyment, and provides as follows:

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;
- (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.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the landlord releases the tenant from the fixed term of the tenancy, and the landlord undertakes not to seek compensation for loss of rental income, should such a loss result from a tenancy which ends before April 30, 2011;
- that at such time as the tenant finds alternate accommodation, the tenant will provide the landlord with proper written notice to end the tenancy according to the provisions in the Act;
- that after the date of issuance of this decision, the tenant undertakes to make no further application(s) for compensation as a result of concerns she may have which pertain in any way to the tenancy, for however long it may last;
- that the landlord will reimburse the tenant for the filing fee in the full amount of **\$100.00***;
- that the landlord will reimburse the tenant's moving expenses out of the unit up to a maximum of \$500.00, but only after such time as the tenant has

moved, and only after such time as the tenant has provided the landlord with receipts for the moving expenses;

- that the landlord will unconditionally reimburse the tenant in the full amount of her security deposit of \$600.00 at the end of tenancy.

Following from the above agreement reached between the parties, matters in dispute remain limited to the following:

- i) the tenant's claim for compensation of \$65.00 arising from a medical visit for allergies in June 2010, and of \$70.00 arising from a medical visit for allergies in October 2010;
- ii) compensation for, among other things, breach of the right to quiet enjoyment for the seven (7) month period from May to November 2010.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant's health concerns bear at least some relationship to the circumstances of her tenancy. Accordingly, I find that she has established entitlement limited to \$67.50*, which is half the amount claimed $[(\$65.00 + \$70.00) \div 2]$.

As to the range of other concerns described by the tenant which arise out of this tenancy, I find she has established entitlement to \$1,070.00*. This is calculated on the basis of an average of \$5.00 per day, for 214 days, which is the total number of days in this tenancy from May 1 to November 30, 2010.

Pursuant to my findings, as above, I find that the tenant has established a claim in the total amount of \$1,237.50* $(\$100.00 + \$67.50 + \$1,070.00)$.

Finally, and once again, repayment of the security deposit (\$600.00) and reimbursement of moving costs (up to \$500.00) are to be undertaken respectively, at and after the end of tenancy.

Conclusion

Following from the above, I hereby order that the tenant may withhold payment of rent in the full amount of \$1,200.00 for December 2010, and withhold \$37.50 from the subsequent regular payment of rent for January 2011.

Should the tenancy end before January 2011, I hereby order the landlord to add \$37.50 to the repayment of the tenant's \$600.00 security deposit.

DATE: November 12, 2010

Dispute Resolution Officer