

Decision

Dispute Codes: OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with two applications: i) by the landlords for an order of possession, a monetary order as compensation for unpaid rent (mistakenly shown on the application as compensation for damage to the unit, site or property), and recovery of the filing fee; ii) by the tenants for cancellation of a notice to end tenancy for unpaid rent, an order instructing the landlords to make emergency repairs for health or safety reasons, and an order permitting the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties participated and / or were represented in the hearing and gave affirmed testimony. At the hearing the landlords' agent withdrew the aspect of the landlords' application to recover the filing fee.

Issues to be decided

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

Background and Evidence

The documentation submitted by the parties shows a variety of styles of cause (names) for the landlords. Further, during the tenancy it appears that the tenants have dealt with various individuals said to be representing the landlords; the agent representing the landlords at this hearing identified two of these individuals as "caretakers," and claimed that neither of them had authority to negotiate anything related to the tenancy with the tenants on behalf of the landlords.

A copy of the tenancy agreement submitted into evidence shows that the month-to-month tenancy began on April 1, 2008. Rent in the amount of \$800.00 is payable in advance on the first day of each month. A security deposit of \$400.00 was collected at the outset of tenancy. Tenant "BMP" testified that \$400.00 was also collected by one of the caretakers for a pet damage deposit when tenant "LMJH" moved into the unit with him in April 2010. However, while collection of a security deposit is noted on the tenancy agreement, there is no documentary evidence that a pet damage deposit was also collected.

Arising from rent which was unpaid when due, the documentary evidence submitted by the parties shows that two separate 10 day notices for unpaid rent were served by the landlords. These are dated, respectively, September 2 & 28, 2010. While there is some confusion around when / how each of these notices was served, the tenants acknowledge that at least one of them was served in person, while one of them appears to have been served by way of posting on the tenants' door.

The tenants first filed an application for dispute resolution on September 8, 2010, and then submitted an amended application on October 7, 2010. The amended application is the one which includes an application to set aside the notice to end tenancy. The tenants do not dispute that rent is currently in arrears as follows:

\$400.00: June

\$400.00: July

\$400.00: August

\$800.00: September

\$800.00: October

Total: \$2,800.00

Further, the tenants acknowledge that they made no payment towards rent following the issuance of either of the above two notices.

The tenants claim that they entered into an agreement with one of the landlords' caretakers whereby some painting would be undertaken by the tenants in exchange for a reduction in rent. The tenant testified that he completed 93 hours of work at a negotiated hourly rate of \$15.00 (total: \$1,395.00). However, the parties agreed that there is no documented evidence of such an agreement, and neither of the caretakers was present at the hearing.

As to difficulties the tenants claim they encountered in the unit as a result of blocked drainage in the kitchen sink, the landlords' evidence is that the landlords arranged for a plumber to attend to the problem in a timely manner. Related evidence includes, but is not limited to, a letter from the tenant to the "owner or management" dated August 3, 2010, identifying concerns about drainage, as well as a letter included in the landlords' evidence dated September 20, 2010, in which a plumber confirms that he was contacted by a representative of the landlords on August 4, 2010 with a request to "check the main drainage problem." In the plumber's letter he states, in part, that the problem was "mainly an accumulation of food debris over time," and that the sink pipes were cleaned and "the problem was fixed." Additionally, the tenant has submitted photographs showing a flooded area of floor within the unit.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with two separate 10 day notices to end tenancy for unpaid rent dated, respectively, September 2 & 28, 2010. Even if I find that the later notice dated September 28, 2010 was the notice served by way of posting on the tenants' door, the

tenants' application to dispute the notice is dated October 7, 2010, which is more than the 5 days permitted for disputing the notice following what would be the date of its receipt on October 1, 2010. Further, the tenants did not pay the outstanding rent within 5 days of receiving the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice, and I find that the landlords are entitled to an order of possession.

The tenants' application to set aside the notice to end tenancy is therefore hereby dismissed.

As for the landlords' application for a monetary order, I find that they have established a claim of \$2,800.00. This is comprised of unpaid rent as set out above. I order that the landlords retain the security deposit of \$400.00, which leaves a balance of monetary entitlement in favour of the landlords for \$2,400.00 (\$2,800.00 - \$400.00).

In the absence of any documentary evidence in support of the tenants' claim that the landlords (by way of a caretaker) also collected a pet damage deposit of \$400.00, I find that I am unable to offset the quantum of the monetary order by that additional amount.

As for the tenants' application for a monetary order, there is an absence of substantial documentary evidence. However, based on the affirmed testimony of the tenant and in light of the confusion around who has been named in documentary submissions as the landlords, and who has represented him or herself to the tenants as the agent(s) of the landlords, on a balance of probabilities I find that the tenants have established entitlement to \$697.50, which is half the amount claimed in labour for painting ($\$1,395.00 \div 2$).

Further, in regard to the tenants' claim for compensation resulting from flooding in the unit, once again, on a balance of probabilities I find that the tenants have established

limited entitlement in the amount of \$200.00. The total entitlement established by the tenants is therefore \$897.50 (\$697.50 + \$200.00).

As plumbing repairs have been completed, and the tenancy is near to a conclusion, the tenants' application for an order instructing the landlord in relation to the completion of emergency repairs is hereby dismissed.

Offsetting the respective entitlements, I find the landlords are entitled to a monetary order in the amount of \$1,502.50 (\$2,400.00 – \$897.50).

Conclusion

Pursuant to all of the above, I hereby issue an **order of possession** in favour of the landlords effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$1,502.50**. 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: November 1, 2010

Dispute Resolution Officer