Decision

Dispute Codes: MNDC, 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, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

There is no written tenancy agreement for the month-to-month tenancy which the tenants entered into with the former owner of the property, on or about September 19, 2008. The unit is located in the developed basement portion of a house; the owner / landlord's residence is on the main floor of the house. The property changed owners and the new owner took possession of the house on February 15, 2010. On February 16, 2010, the new owner began moving into the main floor of the house, storing some of her possessions in the shared garage, and delivering plants and garden supplies to the shared yard. The dispute is between the tenants and the new owner who became the landlord following her purchase of the house.

The former owner issued a 2 month notice to end tenancy for landlord's use of property dated December 31, 2009. The date shown on the notice by when the tenants must vacate the unit is February 28, 2010. However, in early January 2010, the new owner / landlord and the tenants reached agreement to continue the tenancy.

Monthly rent was $1,250.00, and a combined security & pet damage deposit in the total amount of $1,250.00 was collected near the outset of tenancy in 2008.

While the relationship between the parties began agreeably, with the passage of time animosity developed. The tenants make certain allegations which, from their perspective, contributed to the development of ill-will. These include, but are not necessarily limited to, the landlord's barricading of the vegetable plot, the landlord's reduction of available storage space in the garage arising from her own use of some of the space for storage, the landlord's restriction of access to the foregoing by way of changing the locks and not providing the tenants with keys, the landlord's concern about second hand smoke entering her living space, the landlord's desire that the tenants pick up their dogs' feces in the yard on a daily basis, the landlord's proposal for a written tenancy agreement which included suggested changes to certain terms of the tenancy agreement, the landlord's unauthorized entries into the unit, and so on.

The new landlord prepared a written tenancy agreement for a month-to-month period of tenancy from February 15, 2010 to May 31, 2010. However, while this agreement was never signed by either party, the copy in evidence bears manual notations beside certain provisions, apparently made by the tenants (for example: "agree," "do not agree" etc.)

Ultimately, by way of e-mail from the tenants to the landlord dated March 25, 2010, the tenants confirmed the agreement reached during their conversation earlier that same day, and gave 2 months' notice of their intent to end the tenancy effective May 31, 2010. However, following this the tenants gave written notice dated March 28, 2010 of their intent to end the tenancy effective April 30, 2010. Thereafter, by e-mail from the landlord to the tenants dated April 1, 2010, the landlord thanked the tenants "for your one month notice to terminate the tenancy…….by April 30, 2010." Further, in her e-mail the landlord also directs the tenants to address any future matters related to the tenancy to her agent. While the tenants' actual move-out date was April 12, 2010, they

delivered possession of the unit and returned the keys to the landlord on or about April 30, 2010.

Enclosed with a hand delivered letter from the landlord to the tenants dated May 14, 2010, was a cheque in the total amount of $1,255.58, representing the landlord's repayment of the combined security & pet damage deposit plus interest.

During the hearing the parties undertook briefly to explore the prospect of a mutually agreeable resolution of the dispute, however, no settlement was achieved.

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/

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

$408.33: *loss of rented facilities / space from February 15, 2010 onwards*. The relevant legislation is set out in section 27 of the Act which speaks to **Terminating or restricting services or facilities**, and reads in part as follows:

> 27(1) A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
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> (b) providing the service or facility is a material term of the tenancy agreement.

As previously noted, there is no written tenancy agreement for this tenancy. However, it appears that an understanding was reached whereby the tenants and the landlord shared space in the garage and the yard, including the garden(s).

As for the allegedly impeded access to the garden(s), I find on a balance of probabilities that by placing bags of soil and so forth around the outside perimeter of the garden plot, the landlord sought to limit access by the tenants' dogs, who, the landlord claims, were prone to defecate there. In summary, I find that the tenants' access to the plot was not terminated or significantly impeded, and the application for compensation in this particular regard is hereby dismissed.

The reduction of open storage space in the garage is addressed below.

As for the changing of locks on the garage, the landlord acknowledged that this took place on April 2, 2010. Keys to the new locks were not given to the tenants. I find that the tenants have therefore established entitlement to compensation on the basis that, while access to the garage was granted on request, unrestricted access was no longer available to them from April 2, 2010 to the date when they effectively vacated the unit on April 12, 2010. I find this entitlement to be **$110.00***, which is calculated on the basis of $10.00 per day for each of the 11 days from April 2 (inclusive) to 12 (inclusive), 2010.

Unspecified "$" amount: *aggravated damages from April 2, 2010 onwards*. While the total amount of this aspect of the claim is left undetermined by the tenants, it includes the following two components: i) loss of earnings for tenant "GK" in the amount of $763.14, and ii) moving costs of $707.80. There is also reference to a potential "relocation of family to the UK" in the estimated amount of approximately $25,000.00.

I find that as there is insufficient evidence of any particular loss of earnings, and insufficient evidence that the landlord's actions contributed to any such loss, this particular aspect of the claim is hereby dismissed.

The tenants were not unlawfully evicted by the landlord. The tenants served notice to the landlord of their intent to conclude the tenancy and vacate the unit. Accordingly, I find there is insufficient evidence to support any entitlement to moving costs, and this aspect of the claim is hereby dismissed.

As to the theoretical relocation of the tenants to the UK, it did not eventuate. I therefore hereby dismiss this aspect of the claim.

In summary, the combined evidence of both parties speaks to an experience of discomfort for the tenants as well as the landlord. Having carefully considered the documentary evidence and testimony, I find on a balance of probabilities that there is insufficient evidence to support entitlement by the tenants to any award of aggravated damages. This aspect of the application is, therefore, hereby dismissed in its entirety.

$1,083.16: *loss of safe home.* The amount claimed is calculated by the tenants on the basis of rent at $41.67 per day, times 26 days between April 5 to 30, 2010. I find that after giving 1 month's notice in May 2010, even while the tenants later vacated the unit on April 12, 2010, they retained possession of the unit until on or about April 30, 2010 when they returned the keys to the landlord. In the result, the tenants paid the full amount of rent due for April 2010.

Following careful consideration of the documentary evidence and testimony, I find there is insufficient evidence of entitlement to this aspect of the claim as set out on the basis of such allegations that police informed the tenants they had no legal right to enter their home, that report of a "fictional break and enter" was used as a justification for restricting access to the garage, that the landlord and her agent failed to respond to certain e-mails from the tenants, and that a notice of entry was posted by the landlord on the tenants' door. This aspect of the claim is hereby dismissed.

$350.00: *loss of personal property.* This aspect of the claim arises from the dismantling of the tenants' spa base. While the spa itself was relocated elsewhere within the yard, the foundational sand remained on the ground and 2 outdoor chairs were then placed on top of it. Pieces of lumber which had formed a perimeter / base around the sand were removed and apparently stored within view inside the garage. There appears to be no disagreement that the spa was inoperable at the time of its relocation. In short, in the absence of sufficient evidence that property was ever actually disposed of, I find the

tenants have established entitlement limited to **$25.00**.* This amount represents the estimated value of sand left dispersed on the ground after the dismantling of the spa base and the subsequent relocation of the spa itself.

Unspecified "$" amount: *breach of the right to quiet enjoyment.* The relevant legislation is set out in section 28 of the Act which speaks to **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:
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> (a) reasonable privacy;
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> (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]*;
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> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenants set out miscellaneous concerns in support of this aspect of their claim which include, but are not necessarily limited to, the landlord's refusal to grant access to "parts of the rental premises and their personal property," "removing or restricting tenants' rights and services," "coercing" the signing of a tenancy agreement which "reduces the tenant's rights," "reporting of the fictional 'break and enter'," changing of the locks to the garage, and entry into the unit "without giving notice."

Some of these matters have already been addressed. As for the rest, having considered the documentary evidence and testimony, I find that the tenants have established entitlement limited to **$100.00***. This limited entitlement derives from a number of events which include the dismantling of the spa base and relocation of the spa, the initial placement of 2 outdoor chairs in place of the spa adjacent to the tenants'

kitchen window, the likely unanticipated introduction of the landlord's possessions into the shared garage space, and the temporary storage of soil & plants in the shared yard / garden area. This entitlement is limited, in part, by my view which is that some of the disturbances experienced by the tenants were temporary and were not unreasonable under the circumstances. Further, and as previously noted, while the relationship between the parties gradually deteriorated, it began on a positive note.

$25.00: *notary fees.* 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 application is hereby dismissed.

$50.00*: *filing fee.* As the tenants have achieved some success with their application, I find they have established entitlement to recovery of the filing fee.

Total: $285.00

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 **$285.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 30, 2010

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Dispute Resolution Officer