

Decision

Dispute Codes: MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order as compensation for the cost of emergency repairs, 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 any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

There is no copy of a written tenancy agreement in evidence for this month-to-month tenancy which began in approximately April 2007. At the outset of tenancy monthly rent was \$925.00 and a security deposit of \$462.50 was collected. When the tenants vacated the unit towards the end of November 2010, monthly rent was \$940.00. There is neither a move-in nor a move-out condition inspection report in evidence.

Arising from rent which remained overdue on November 1, 2010, the landlord issued a 10 day notice to end tenancy for unpaid rent dated November 12, 2010. As only the first page of what is a two page notice was submitted in evidence, there is no documentary evidence to support the exact amount of rent which was overdue. Subsequently, the tenants made no further payment toward rent and vacated the unit on or about November 30, 2010.

The tenants claim it was determined in March 2010 that a water leak existed in their bathroom. After reporting the problem to the landlord, repair work commenced in April 2010. Repairs included extensive work in the tenants' bathroom and, as progress was

slow, the tenants withheld payment of rent beginning in September 2010. Repair work was not near completion until November 2010. Further, during the repairs the tenants claim that their patio was converted to a workshop area and equipment and supplies used by various trades people were stored there. Evidence submitted by the tenants includes photographs, a “video file” and limited e-mail exchanges between the parties.

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/

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.

Section 28 of the Act 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.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that there was a breach to the tenants' right to quiet enjoyment, and a reduction in the full use of the facilities provided in the rental unit, during the eight (8) month period from April to November 2010.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**, and provides:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Further, Residential Tenancy Policy Guideline # 5 speaks to the "Duty to Minimize Loss," and provides in part as follows:

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the

landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

While the tenants had the option of applying for dispute resolution in order to seek an order instructing the landlord to complete repairs in a timely manner, or to seek a reduction in rent for repairs, services or facilities agreed upon but not provided, there is no evidence that they did so. Accordingly, I find that the tenants have established entitlement to compensation in the limited amount of \$600.00, calculated on the basis of \$75.00 per month x 8 months.

As the tenants have achieved some success with their application, I find that they are also entitled to recover the \$50.00 filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$650.00** (\$600.00 + \$50.00). 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: December 16, 2010

Dispute Resolution Officer