Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, OLC, & FF

Introduction

This hearing dealt with cross applications by the parties. The tenants filed an application on July 23, 2010 seeking a monetary claim due to a breach of their right to quiet enjoyment by the landlord. The tenants also seek an Order that the landlord comply with the *Act*. On July 26, 2010 the landlord filed an application seeking a monetary claim due to unpaid rent and for damage allegedly caused to the rental unit by the tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Did the landlord breach the tenancy agreement or *Act* entitling the tenants to a monetary claim for loss of quiet enjoyment?

Did the tenants' breach the tenancy agreement or *Act* entitling the landlord to monetary relief for loss of rent and damage to the rental unit?

Background and Evidence

This tenancy began October 15, 2009 and ended July 31, 2010. The monthly rent was $1,780.00 and the tenants paid a $900.00 security deposit on January 1, 2010. Written move in and move out condition inspection reports were not completed.

The dispute between the parties involved the landlord's attempt to show the rental unit to prospective new tenants beginning the end of June 2010 to the end of July 2010. Each party submits that the other was in violation of the *Act* and caused loss or damage to the other due to their behaviours. The tenants alleged that the landlord failed to give proper notice as required by the *Act* and unreasonably disturbed them at home and at work. The landlord alleges that the tenants unreasonably blocked her from showing the

rental unit to prospective tenants. The landlord also alleges that the tenants damaged a window in the rental unit and failed to leave the rental unit clean.

Both parties provided documentary evidence which shows that the landlord provided multiple notices to access the rental unit over the period of June 22, 2010 to July 30, 2010. Although the landlord acknowledged finding new occupants and signing a new tenancy agreement with the new tenants on July 21, 2010, the landlord continued to show the rental unit until July 30, 2010.

The tenants alleged that in addition to the multiple notices to access the rental unit the landlord also attempted to access the rental unit without prior written authorization. The landlord would also repeatedly call the tenants at home and at work in an attempt to arrange showings. The tenants argued that even though they were flexible and would try to accommodate the landlord's needs, the landlord would never accommodate their needs if a showing time was not convenient. The tenants also claimed that in addition to the multiple written and telephone calls to arrange showings, the landlord would also show up at the rental unit during unscheduled times.

The tenants submitted that the entire experience was very uncomfortable and significantly interfered with their enjoyment of the rental unit during the last month of the tenancy.

The landlord submitted that she is very upset about the entire experience and in all her years as a landlord she has not experienced so little co-operation in showing a rental unit. The landlord attempted to discredit the tenants' credibility by discussing issues related with the security deposit at the beginning of the tenancy and with inconsistencies with the dates presented by the tenants.

The landlord denied entering the rental unit without notice and stated that she often provide 3 days notice. The landlord also submitted that it was at the request of the tenants that she called their cell phones or place of employment to inform them of schedule viewings.

The landlord claimed that despite all the notices that she provided the tenants did not allow her to access the rental unit until mid July 2010 and that she only access the rental unit a total of 5 times.

The landlord stated that she continued to show the rental unit after she had found new tenants only as a backup in the event that the new tenancy was not fulfilled.

The landlord acknowledged that move in and move out condition inspection reports were not completed and the tenants confirmed that they paid $198.00 towards carpet cleaning at the end of the tenancy. The landlord stated that the carpets required further cleaning after the tenants had vacated and their furniture had been removed.

The landlord submitted documentary evidence after the Dispute Resolution hearing was concluded. This evidence was not provided in accordance with the rules of procedure and has not been view or considered as part of this decision.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Both the tenants and the landlord have the burden of proving their respective claims.

With respect to the landlord's claim for damage to the rental unit, I find that the landlord has not provided sufficient evidence to demonstrate that the tenants are responsible for any further costs related to carpet cleaning. I am satisfied that the tenants cleaned the carpets and in the absence of a move in and move out condition inspection report I am not persuaded that any additional cleaning was required. I dismiss the landlord's claim for addition carpet cleaning costs.

I am also not persuaded that the tenants are responsible for any damage to the stain glass window. Again, without a move in condition inspection report to establish the condition of the window at the start of the tenancy, there is insufficient evidence to demonstrate that any damage was caused to the window by the tenants. Therefore, I dismiss the landlord's claim for damage to the stain glass window.

Finally, I dismiss the landlord's claim for loss of rent. I am not satisfied that the condition of the carpets, in the absence of a move out condition inspection report, resulted in the new occupant's decision to not fulfil the tenancy agreement. I am also satisfied that the landlord was successful in renting the suite as of July 21, 2010 and that the tenants did not hinder the landlord's ability to find new occupants.

With respect to the tenant's application I accept that the landlord misused her right to access. Section 29 of the *Act* restricts a landlord's right to enter a rental unit without a reasonable purpose and only if at least 24 hrs written notice is provided.

The first notice of entry provided by the landlord on June 17, 2010 state the following viewing times;

> Monday to Friday between the hours of 1 – 3 p.m. and 5:30 - 7:30 p.m.
> Saturday and Sunday between the hours of 1 – 3 p.m. and 5:30 – 8 p.m.
>
> and other times as required

The stated purpose of the viewings was to show the unit to prospective renters.

I find that this notice was unreasonable and contrary to sections 28 and 29 of the *Act* as the landlord was intending to access the tenants' unit 7 days a week, twice a day. If this had occurred I would have determined that the landlord breached the tenants' right to quiet enjoyment.

However, the landlord subsequently accessed the rental unit by posting notice before entry. Based on the documentary evidence provided by both parties, I am satisfied that the landlord regularly gave the tenants written notice at least 24 hours a day before a viewing time. I am also satisfied that the landlord called the tenants as requested by the tenants. I don't accept the tenants' claim that they were unreasonably disturbed at work because I accept that they wanted the landlord to call them regarding showings at the rental unit. The tenants did not provide the landlord with a written complaint about the way the rental unit was being view until July 23, 2010.

I find that the landlord had a right to access the rental unit until July 23, 2010 and during this period reasonable notice was provided and the landlord had reasonable grounds to access the rental unit. However, I find that the landlord no longer had any reason to access the rental unit after July 21, 2010 when she found new renters and certainly no reason after receiving the written complaint from the tenants on July 23, 2010.

Although I accept that evidence from the tenants that the landlord entered the unit on at least one occasion without written notice, the tenants did not make any complaint of the situation in writing until July 23, 2010. Therefore, I grant the tenants' application in part and I find that the landlord breached sections 28 and 29 of the *Act* by continuing to access the rental unit from July 22 to July 30, 2011. I grant the tenants a monetary claim for the sum of **$284.08** based on 4 unnecessary viewings of the rental unit plus the reimbursement of the $50.00 filing fee paid by the tenants for this application for Dispute Resolution.

Conclusion

The landlord's application is dismiss without leave to re-apply.

The tenants' application is granted in part and I have issued the tenants' a monetary Order of the sum of **$284.08**. This sum may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 14, 2011.

Residential Tenancy Branch