

DECISION

Dispute Codes

Landlord: OPR, MNR, FF, MNSD
Tenant: CNR, MNR, MNDC, ERP, RP, FF

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenants. The landlord has applied for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application.

The tenants both attended the conference call hearing and the landlord company was represented by an agent. At the outset of the hearing, the tenants advised that they have provided the landlord with notice to vacate the rental unit, and will be vacating today; the tenants consent to an Order of Possession in favour of the landlord effective January 31, 2011 at 4:30 p.m. and withdraw the applications for an order cancelling the notice to end tenancy, the application for an order that the landlord make emergency repairs for health or safety reasons, and the application for an order that the landlord make repairs to the unit, site or property.

The landlord's agent indicated at the outset of the hearing that he wished to claim against the security deposit for unpaid rent or utilities, and I hereby order that the landlord's application be amended to include that claim.

The parties all gave affirmed testimony, and the landlord called a witness, being the resident manager of the apartment building. The parties were given the opportunity to cross examine each other and the witness. The parties also provided evidence in advance of the hearing, however, all evidence provided by the tenants was not received by the Residential Tenancy Branch or the landlord within the time prescribed by the *Act*

and the Rules of Procedure. The landlord did not oppose the consideration of that evidence, and therefore, all information and testimony provided has been reviewed and is considered in this Decision.

The landlord also stated that he received 2 amended applications from the tenants. The first application filed contained a monetary claim for \$4,417.00. The first amended application contained a monetary claim for \$7,417.00. The second amended application contained a monetary claim for \$25,000.00. During the course of the hearing, I had indicated to the parties that I had not received the second amended application. After the hearing concluded, I received the second amended application along with a note from the tenants stating that the claim is for punitive damages, a copy of a hotel receipt, a copy of the tenant's written forwarding address to the landlord dated January 28, 2011, a copy of the tenancy agreement and a note from one of the tenants stating that a copy of the amended application was served on the landlord on January 25, 2011.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to a monetary order for the cost of emergency repairs?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The undisputed evidence of the parties is that the fixed-term tenancy began on April 1, 2010 and ended on September 30, 2010 and then reverted to a month-to-month tenancy. The tenants resided in a different unit within the apartment complex prior to this tenancy, and the landlord collected a security deposit from the tenants on January 1, 2010 in the amount of \$525.00. Rent in the amount of \$1,050.00 is payable in advance on the 1st day of each month, and the tenancy agreement contains a clause requiring the tenants to pay \$25.00 for a late fee for each month that rent is paid late, as well as a \$25.00 N.S.F. fee.

The landlord's agent testified that the tenants put a stop payment on the rent cheque for January, 2011. The landlord is not claiming the \$25.00 late fee or the \$25.00 N.S.F. fee but claims the outstanding rent in the amount of \$1,050.00 and the \$50.00 filing fee. On January 8, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy

for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. That notice states that the tenants have failed to pay rent in the amount of \$1,100.00 that was due on January 1, 2011 and contains an expected date of vacancy of January 17, 2011. The witness testified that the notice was served on January 8, 2011.

The tenants testified that they withheld the rent because the suite was not suitable due to bed-bugs. They stated that in November, 2010 they started to get bed-bugs. On December 14, 2010 a neighbour told the female tenant that the landlord was to start spraying suites. She spoke to the resident manager who confirmed that it was for bed-bugs which is when the tenant first became aware of the bug problem. She asked the resident manager to inspect her suite, and that she wanted to speak to the exterminator when he/she was available. No one went to the tenants' suite, but the resident manager gave the tenant the property manager's phone number. She called and left a message, and the call was returned on December 17, 2010. The property manager told her that she didn't know these tenants had bed-bugs, and told the tenant to catch one and put it in a baggie before the landlord would deal with it. The tenants caught one and took it to an exterminator who confirmed that it was a bed-bug.

On December 28, 2010 the tenant gave the resident manager the baggie containing the bug, but she refused to take it and advised the tenant to give the landlord written notice. They did so on December 29, 2010 along with a copy of the letter from the exterminator. They were then advised by the resident manager that nothing would be done until the end of January, 2011. Due to the pest-free protocol, the exterminators wouldn't be back until then.

The tenant called the landlord's exterminator to enquire about that protocol and they replied that they would have to treat the whole building, but could not force the landlord to do that. On January 1, 2011 the tenants gave notice to move from the rental unit.

The tenants also testified that furniture and other items cannot be treated. They stated that small rips appear in their couch and bed, and ripped fabric items cannot be treated. The tenants left the rental unit on January 21, 2011 and stayed in a hotel. The tenants are claiming \$1,584.00 for the hotel cost as well as replacement of the bunk beds for \$350.00, the kitchen table and fabric chairs for \$50.00 the entertainment stand for \$50.00, camping supplies (a tent and air mattresses) for \$150.00 and \$150.00 for toys and children's articles, but provided no receipts for those items. The tenants also claim punitive damages from the landlord.

The male tenant testified that the landlord failed to treat their rental unit, and on November 2, 2010 the landlord was ordered by a Dispute Resolution Officer to treat the entire building. He further testified that the landlord had told another tenant not to tell

any other tenants about the bed-bugs or the spraying, and that during a meeting, the landlord advised the tenants not to tell other tenants because only the affected suites would be treated.

The male tenant also testified that the tenancy agreement provided by the landlord is fraudulent; he stated that he obtained a true copy from a previous agent of the landlord.

The landlord's agent responded that the tenants did not provide evidence that bed-bugs existed until the end of December, 2010. He further denied that the Residential Tenancy Branch ordered that the entire building was to be treated. He stated that they do not want bed-bugs, and that signs were placed at the entrances and in the elevator of the building advising tenants and their guests to avoid common areas for 6 hours.

The landlord's agent also testified that the tenants were given instructions to prepare their unit for spraying, and that the landlord had agreed to treat the unit on January 19, 2011 but the tenants refused that treatment, thereby failing to mitigate any loss or damage. He further testified that the tenants had posted their own signs alerting other tenants that the building was infested and that they should call the Residential Tenancy Branch. As a result, the landlord issued a "Cease and Desist" letter to the tenants.

The tenants responded that they refused treatment because the landlord did not treat the entire building.

Analysis

The tenants have not opposed an Order of Possession in favour of the landlord, and I find that the tenants have not paid the outstanding rent and have admitted to withholding rent because they feel the rental unit is uninhabitable. Further, the landlord did not oppose the tenants' suggestion that they would be out of the rental unit by 4:30 today. I therefore grant an Order of Possession effective January 31, 2011 at 4:30 p.m.

I have reviewed the evidence provided by the parties and find that the opinion of the exterminator is that the company had attended to this property twice in the past few weeks, and stated that the landlord is properly addressing the pest issue. The same exterminator sent another email to the landlord stating that signs should be posted 72 hours in advance of the treatment when treating common areas. The landlord testified that he posted signs in the elevator and perimeter doors.

I have also reviewed the tenants' evidence and note that the tenants did not indicate in writing that the unit had bed bugs until December 29, 2010, although I accept that the

female tenant did mention it to the manager on December 17, 2010 and then confirmed it verbally on December 28, 2010.

I find that the tenants were given the opportunity to have their suite treated, which treatment may have included the furniture that the tenants are claiming should be reimbursed by the landlord. The tenant stated that the furniture could not be treated because it was old, however the instructions to the tenants states that sofas, loveseats and living room chairs will also be treated, and the email from the exterminator states that: "most furniture, beds, sofas, etc. is treatable as long as it is not old or tattered." That email also states: "As our company has attended to this property twice in the past few weeks, I would say the landlord is properly addressing this issue."

I have also reviewed the Decision of the Dispute Resolution Officer dated November 2, 2010 which was provided by the tenant. I agree with the landlord that the Decision is silent with respect to what areas of the building are to be treated. The Decision states that the landlord is to engage a qualified and licensed pest control professional to assess and commence treatment forthwith and continue with the standard treatment regimen as recommended, and that the tenant comply fully with any direction from the pest control specialists with respect to preparation for treatment. I have no evidence before me what was recommended as a standard treatment regimen and therefore cannot find that the tenants' claim that the landlord was to treat the entire building to be fully acceptable.

The *Residential Tenancy Act* states that:

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.

Punitive damages are meant to be damages to punish a wrong-doer, which I have no discretion to award under the *Act*, however I do have discretion to award damages for compensation for damage or loss that results from the other's non-compliance as long as I am satisfied that the claiming party did whatever is reasonable to minimize the damage or loss. I am not satisfied that the tenants did what was reasonable in the circumstances; the tenants refused the treatment offered by the landlord.

I accept that the tenants were required to stay in a hotel but failed to mitigate any loss or damage commencing with January 19, 2011. Since the tenants did not move to a hotel until after the spraying was scheduled to be completed, the tenants are not entitled to reimbursement of the hotel expenses by the landlord.

I further find that the tenants not only failed to mitigate any loss with respect to the furniture and other items claimed, but failed to establish that those items were in fact infected with the pests, or the actual cost of replacing those items.

The tenants did not lead any evidence of having paid for emergency repairs.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective January 31, 2011 at 4:30 p.m.

The landlord's application for a monetary order for unpaid rent or utilities is hereby allowed. The landlord is also entitled to recovery of the filing fee, and I order that the landlord retain the security deposit in the amount of \$525.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$575.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The tenants' application for a monetary order for the cost of emergency repairs is hereby dismissed without leave to reapply.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

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: February 4, 2011.

Residential Tenancy Branch