

Decision

Dispute Codes: MT, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with 2 applications: i) by the tenant for more time to make an application to cancel a notice to end tenancy / a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / and the double return of the security deposit; ii) by the landlords for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any 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 the month-to-month tenancy which began on or about June 25, 2008. Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month. A security deposit of \$600.00 was collected at the start of tenancy. There is no evidence of a move-in condition inspection or report.

Pursuant to an agreement reached between the parties at a previous hearing, an order of possession dated August 27, 2010 was issued in favour of the landlords effective September 15, 2010. Thereafter, it is understood that the tenant vacated the unit on or about September 16, 2010. Following from the foregoing, I consider that the aspect of the tenant's application concerning more time to make an application to cancel a notice to end tenancy, to be withdrawn. There is no evidence of a move-out condition inspection or report.

While the tenant testified that she provided the landlords with her forwarding address in care of a neighbour's address on or about September 16, 2010, the landlords testified that they first became aware of the tenant's forwarding address on November 1, 2010, which is when they state they received a copy of her application for dispute resolution.

The landlords filed their own application for dispute resolution on November 2, 2010. There is no copy of the tenant's written advice to the landlords of her forwarding address in evidence. However, included in the tenant's evidence is a letter dated October 6, 2010 from a friend of the tenant's who claims that she was present on September 16, 2010 when the tenant gave the female landlord the tenant's forwarding address in writing. The tenant's application for dispute resolution was later filed on October 4, 2010.

The tenant claims that as a result of leaks in the garage / carport roof, miscellaneous of her possessions were damaged and had to be discarded. She estimates the value of loss to be approximately \$2,000.00. Included in the tenant's evidence is a letter from a neighbour dated August 9, 2010, and a letter from a friend dated October 6, 2010; the writers of both letters variously confirm the existence of water leaks in the ceiling of the garage / carport, and "very damp and collapsing boxes" full with the tenant's belongings.

As to rent, the tenant claims that she gave the female landlord an envelope containing a money order for the August rent in the amount of \$1,200.00, which the landlord tore up. The landlord claims she had no knowledge that the envelope may have contained such a money order. The tenant did not dispute that rent was unpaid for May (\$787.00), June (\$787.00), July (\$787.00) or September (\$1,200.00).

Included in evidence submitted by the landlords is a receipt for repairs and other work required in the unit after the end of the tenancy, photographs showing various damage, as well as assorted rubbish allegedly left behind at the unit which had to be removed.

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/

The particular attention of the parties is drawn to the following sections of the Act:

Section 23: Condition inspection: start of tenancy

Section 24: Consequences for tenant and landlord if report requirements not met

Section 35: Condition inspection: end of tenancy

Section 36: Consequences for tenant and landlord if report requirements not met

Section 38: Return of security deposit and pet damage deposit

LANDLORDS' CLAIM

\$4,000.00: *damage to property*. I note that evidence submitted by the landlords includes a receipt showing a grand total expense of \$5,376.00, including tax, for miscellaneous repairs, painting and rubbish removal.

However, following consideration of the documentary evidence and testimony of the parties, and in the absence of either a move-in or move-out condition inspection report, I find there is insufficient evidence to support the landlords' claim for compensation related to cleaning and repairs undertaken in the unit after the end of tenancy.

\$300.00: *cost of removing garbage*. Further to the above, there is no separate receipt for rubbish removal and this cost appears to be included in the total shown on the receipt for \$5,376.00. Having considered the documentary evidence which includes photographs, and the testimony of the parties, I find on a balance of probabilities that the landlords have established entitlement limited to **\$100.00*** for removal of rubbish left behind by the tenant.

\$4,761.00: *unpaid rent / loss of rental income* (\$787.00 x 3 for May, June & July / \$1,200.00 x 2 for August & September). Following consideration of the documentary evidence and testimony of the parties, I find on a balance of probabilities that the envelope torn up by the female landlord contained a money order for payment of rent for August in the amount of \$1,200.00. I further find that the landlords have established entitlement limited to **\$3,561.00***, which is comprised as follows:

\$2,361.00: \$787.00 x 3 (May, June & July)

\$1,200.00: September

\$100.00: *filing fee*. As the landlords have established partial success with their application, I find they have established entitlement to **\$50.00***, which is half the amount claimed.

Total: \$3,711.00* (\$100.00 + \$3,561.00 + \$50.00)

TENANT'S CLAIM

\$1,200.00: *double return of the security deposit* (2 x \$600.00). After consideration of the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant informed the landlords in writing on September 16, 2010 of

her forwarding address for the purposes of returning the security deposit. As the landlords neither returned the security deposit nor filed an application for dispute resolution within 15 days after September 16, 2010, I find that the tenant has established entitlement to the full amount claimed of \$1,200.00 plus interest of \$4.67, for a total of **\$1,204.67***.

\$2,000.00: *estimated value of possessions broken and/or lost due to water damage.* In summary, the tenant claims that the items damaged beyond recovery include, but are not necessarily limited to, miscellaneous books, records, cassette tapes, clothes, wedding decorations, kids' toys, a television, lamps, canning jars, plastic bins, blankets, a stereo set, family pictures and so forth. The tenant describes a loss which is both monetary and sentimental in nature.

However, the tenant's evidence does not include photographs, receipts, estimates of value for particular items, or a description of the age or condition of any of the items allegedly broken or lost. Having considered the limited documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has established entitlement limited to **\$250.00***.

Total: **\$1,454.67*** (\$1,204.67 + \$250.00)

Offsetting the respective entitlements, I find that the landlords have established a net entitlement to **\$2,256.33** (\$3,711.00 - \$1,454.67)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$2,256.33**. This order may be served on the tenant, filed in the 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*.

DATE: February 7, 2011

Dispute Resolution Officer