

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing was convened in response to the tenant's original application for a monetary order as compensation damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package"), the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the package was "successfully delivered."

Issues to be decided

- Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement

Background and Evidence

The tenant became aware of the unit by way of an on-line advertisement. There is no copy of a written tenancy agreement in evidence, but the tenant testified that a one page month-to-month tenancy agreement of sorts prepared by the landlord was signed by the parties on August 10, 2011. The rent advertised was \$1,200.00 per month, and on August 10, 2011 a security deposit of \$600.00 was collected. At the time when the security deposit was collected the landlord stated that the unit would not be fit for occupancy until several days later. The tenant testified that damage suffered by the unit was, at least in part, the result of a marijuana grow-up that had been in the unit. In the meantime, the tenant, her daughter and two sons (one a carpenter) undertook some cleaning and repairs as they were eager to move into the unit as soon as possible.

However, the tenant never actually moved in, as the landlord informed her on September 12, 2011 that he had decided not to rent the unit. After the landlord declined to return the security deposit, the tenant filed her application for dispute resolution on September 23, 2011. Thereafter, on September 30, 2011 the landlord returned the tenant's security deposit and, as a result, during the hearing the tenant withdrew the limited aspect of her application concerning return of the security deposit.

The claim remaining concerns recovery of the filing fee, compensation for aggravation and inconvenience, as well as time spent cleaning and making certain repairs in the unit. The tenant submits that the following hours were spent by her and family members between the period from approximately August 10 to September 12, 2011:

Tenant: 20 hours

Son: 24 hours

Daughter #1: 12 hours

Daughter #2: 8 hours

Total: 64 hours

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 attention of the parties is drawn to particular sections of the Act and Guidelines as set out below.

Section 16 of the Act speaks to **Start of rights and obligations under tenancy agreement**, and provides:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 32 of the Act addresses **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 44 of the Act speaks to **How a tenancy ends**.

Residential Tenancy Policy Guideline # 16 addresses "Claims in Damages" and provides in part, as follows:

Types of Damages

A dispute resolution officer may only award damages as permitted by the Legislation or the Common Law. A dispute resolution officer can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. A dispute resolution officer may also award “nominal damages,” which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages a dispute resolution officer may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered “pecuniary” losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered “non-pecuniary” losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer’s willful or reckless indifferent behavior. They are measured by the wronged person’s suffering.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the parties entered into a tenancy agreement on August 10, 2011. On a balance of probabilities I also find that the unit did not comply with “the health, safety and housing standards required by law” at the time when the tenancy agreement was entered into. I also find no evidence of the landlord’s having ended the tenancy in a manner that complies with the Act; specifically, notice to end tenancy was not given in writing, and the landlord did not apply to the Residential Tenancy Branch for an order of possession. Further, I find that by permitting the tenant and her family members to carry on periodically with cleaning and repairs over a period of approximately four weeks, the landlord gave the tenant every reason to expect that she would take possession of the unit. In conclusion, on a balance of probabilities I find that the tenant has established entitlement to \$1,210.00, which is calculated as follows:

\$560.00: 64 (number of hours worked) x \$8.75 (BC minimum wage at the time)

\$600.00: nominal / aggravated damages of half of one month’s rent

\$ 50.00: filing fee

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,210.00**. 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.

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: December 12, 2011

Residential Tenancy Branch