



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, MNDC

Introduction

This hearing was originally scheduled on November 8, 2011 in response to the tenants' application for cancellation of the landlords' notice to end tenancy for landlord's use of property / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. The hearing was adjourned and rescheduled for January 9, 2012. Reasons for the adjournment are set out in the Interim Decision dated November 9, 2011.

Issue(s) to be Decided

Whether the tenants are entitled to either or both of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

As documented in the Interim Decision, the tenancy began in April 1995. While monthly rent was initially \$650.00, it was later reduced to its current level which is \$600.00. A security deposit of \$325.00 was collected.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated September 28, 2011. The tenants filed an application to dispute the notice on October 13, 2011. During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

Analysis

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the landlord still retains the original security deposit of \$325.00, and that rent has currently been paid up to the end of January 2012;
- that the tenants will vacate the unit by no later than Saturday, March 17, 2012, and that an order of possession will be issued in favour of the landlord to that effect;
- that by no later than the effective date of the order of possession, as above, the tenants will undertake to remove not only all of their valued possessions, but all of their discarded possessions and all refuse from the unit and the surrounding yard;
- that the tenants will remove from public access on their Facebook page, all references which specifically identify or identify by inference either the landlord or the dispute address;
- that in consideration of the provision immediately above, and after perusing the tenants' amended Facebook page, the landlord will undertake to provide the tenants with a reference in aid of their search for alternate accommodation.

As a result of the above agreement concerning an end date to tenancy and an order of possession, the matter remaining before me is limited to the tenants' application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. In the tenants' original application, the amount of compensation sought was \$22,711.40. In their amended application, while they claim to have reduced this to \$19,503.80, the itemized listing of the various aspects of the claim actually totals \$21,545.00.

Based on the testimony of the parties and the considerable documentary evidence, the various aspects of the tenants' claim and my findings are set out below.

\$10,140.00: rent reduction for leaking roof, calculated on the basis of \$60.00 per month over 169 months from June 1997 to July 2011 (\$60.00 x 169).

\$4,914.00: compensation for the absence of a hot water tank calculated on the basis of \$54.00 per month over 91 months from December 2003 to July 2011 (\$54.00 x 91).

\$3,207.60: compensation for the absence of a functioning heater calculated on the basis of \$48.60 per month over 66 months from November 2005 to May 2011.

\$1,968.30: compensation for the absence of a toilet and shower (2 months from June to August 2011) in combination with a breach of the right to quiet enjoyment (5 months from June 2011 to October 2011) calculated on the basis of \$393.66 per month (\$393.66 x 5).

\$200.00: miscellaneous labour calculated on the basis of \$10.00 per hour over 20 hours (\$10.00 x 20).

\$160.00: compensation for "extra hydro" calculated on the basis of \$2.00 over 80 days (\$2.00 x 80).

\$800.00: reimbursement of the cost for replacement of box spring and mattress

\$155.10: reimbursement of miscellaneous receipts.

Whatever oral communication may have taken place between the parties during a tenancy which has spanned in excess of 16 years, there is a striking absence of documentary evidence to support the tenants' claim that various concerns about the condition of the unit were taken to the landlord's attention. Further, until very shortly the time when the landlord issued a notice to end tenancy dated September 28, 2011, the tenants had not undertaken to file an application for dispute resolution, seeking for example, a reduction in rent for repairs, services or facilities agreed upon but not provided, or an order instructing the landlord to make repairs to the unit, site or property, or an order instructing the landlord to provide services or facilities required by law.

In relatively recent time the parties appear to agree that there was a leak in the ceiling of the front bedroom in April 2011. Renovations to the bathroom began in mid June 2011, and other extensive renovation / construction deemed necessary will be completed after the tenants have vacated the unit.

Despite the absence of formal documentation, I find on a balance of probabilities that there was, from time-to-time, communication to the landlord by the tenants about various concerns with the unit. The tenants claim that the landlord was hard to reach and the landlord acknowledges that because of the nature of her work, "admittedly I only get back to Powell River every year or two." Further, the landlord has stated that while she has "driven by the property" during her visits to town, she has "not arranged to go inside because my travel schedule generally did not permit a daytime visit and I respected the tenants request for privacy." I am persuaded that the tenants "made do" with certain deficiencies and, at times, undertook without the landlord's knowledge or

consent to make certain repairs or devise short term solutions to various problems. In sum, it appears to have sufficiently met the needs of both parties to maintain a pattern of infrequent and informal contact with each other over many years.

Based on the documentary evidence, and the affirmed testimony of the parties, I find that the tenants have established an overall entitlement limited to **\$1,750.00***. I find that this entitlement encompasses consideration of all aspects of the claim made by the tenants as set out above, and it is calculated as follows:

\$1,100.00: \$100.00 per month for the 11 month period from April 2011 to February 2012

\$50.00: the first half of March 2012, following which the tenants will have vacated the unit.

\$600.00: “the equivalent of one month’s rent payable under the tenancy agreement” pursuant to section 51 of the Act which speaks to **Tenant’s compensation: section 49 notice**.

In order to recover this amount I order that the tenants may withhold payment of rent in the amount of \$600.00 for February and \$300.00 for the period from March 1 to 17, 2012, and I hereby issue a monetary order for the balance in the amount of **\$850.00** (\$1,750.00 - \$900.00)

The parties are encouraged to resolve the disposition of the security deposit directly between them at the end of tenancy. In this regard, section 38 of the Act speaks to **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Saturday, March 17, 2012**. This Order must be served on the tenants. Should the tenants fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$850.00**. 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*.

Dated: January 26, 2012.

Residential Tenancy Branch