

DECISION

Dispute Codes MNDC, O MND, FF

Introduction

There are applications filed by both parties. The Landlord has filed an application for a monetary order for damage to the unit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee. The Tenant has filed an application for a monetary order for the loss of quiet enjoyment.

Both parties have attended the hearing and have given testimony. As both parties have attended and have acknowledged receiving the notice of hearing and evidence packages submitted by the other party, I am satisfied that both parties have been properly served as deemed under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on November 15, 2010 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The Landlord claims that the Tenancy ended on April 23, 2012 when the Landlord's Agent attended the rental unit and was informed that the Tenant was being arrested and received a "no go" (order to not return to the rental unit). The Tenant disputes this and claims that she vacated the rental unit on April 21, 2012, but did not provide any notification to the Landlord. The Tenant has also submitted a written statement in which it states, "I moved out April 23. I had actually moved out all my materials on April 21." The monthly rent was \$800.00 per month payable on the 1st of each month. A security deposit of \$400.00 was paid on November 12, 2010. No condition inspection reports for the move-in or move-out were completed.

The Tenant seeks a monetary order for \$1,600.00. This consists of a claim for \$400.00 (1/2 of the monthly rent) at 4 months for the loss of quiet enjoyment. The Tenant claims that she suffered from January of 2012 until the end of her Tenancy, extreme noise daily from construction/renovation work at the rental building. The Tenant claims that multiple occurrences of illegal entry into her rental unit occurred without proper notice.

The Tenant also claims that she went without hot or cold water for varying periods of time. The Tenant states that she suffered from debris being dumped over her balcony onto the ground on many occasions and was afraid for her safety. The Landlord's Agent disputes this stating that no such events took place. The Landlord stated in his direct testimony that work being performed is in another part of the building. The Tenant states that the verbal notice was given to the Landlord to correct these issues. The Tenant claims that all of the notifications were verbal and that the first one was in December of 2011. The Tenant claims that the Landlord was notified at least 3 more times starting in January of 2012 to "Frank". The Landlord disputes this, stating that these claims were never given to the Landlord. The Tenant clarified that the person named, "Frank" was a construction worker on-site. Both parties confirmed that there is no on-site property manager and that partial rent was paid directly from the ministry to the Landlord and that partial rent payments were made by the Tenant, A.R. in person at the Landlord's office a few blocks away normally. The Landlord states that no such complaints/notifications were made to their offices. The Tenant relies on a 4 page excerpt from another Residential Tenancy Branch Decision and a "Metro" news article submitted into evidence. The Landlord disputes this stating that this was hearsay evidence.

I find that the Tenant's claim for compensation has not been established. With conflicting testimonies of both parties that on a balance of probabilities the Tenant has failed to provide sufficient evidence to support the claim. The Tenant's application for a monetary order is dismissed without leave to reapply.

The Landlord has made a claim for \$3,961.60. This consists of \$3,841.60 in damages and a \$120.00 recovery of a writ of possession fee from the Supreme Court of British Columbia. The Landlord claims that damage occurred as a result of the Tenant's actions for a broken glass balcony door, windows and damage throughout the rental unit consisting of holes, damaged cabinets and extensive cleaning required. The Landlord has provided numerous photographs of the interior and exterior of the rental unit. The Tenant disputes this stating that the Landlord has no direct evidence that the Tenant was responsible for the damage. The Tenant states that the rental property was undergoing extensive renovations throughout the building and that the rental unit was vacant from April 21 to 23, 2012. The Tenant further states that no condition inspection report for the move-in or move-out have been completed. The Tenant has stated that no actual receipts/invoices have been submitted by the Landlord for any expenses incurred. The Landlord stated that the windows have been replaced, but has not submitted an invoice. The Landlord has also stated that none of the other repairs have started as the building is still undergoing renovations. The Tenant argues that as no loss has yet been suffered that the Landlord is unable to claim these amounts. The

Landlord has provided direct testimony that although a writ of possession was obtained it was not served/executed on the Tenant. The Landlord stated that as the Tenant failed to comply with the order, that a writ of possession was obtained as a result of the Tenant's non-compliance.

I find that the Landlord has failed to establish their claim for compensation in the amount of \$3,841.60. The Landlord relies on estimates for work done (Glass Station) and for work not yet started (Major Construction). I find that the Landlord has provided insufficient evidence to satisfy me that the Tenant was responsible for the damaged glass. I find that the witness, A.M. provided inconsistent testimony and was unable to identify the Tenant as the person breaking the glass. The Landlord has also failed to provide evidence of a loss. The estimate of work from Major Construction has not yet been performed as of the date of this hearing. This portion of the Landlord's application for compensation is dismissed. However the Tenant has agreed in direct testimony that the rental unit was "a mess". The Tenant has conceded the clean-up cost of \$240.00 and would accept the \$260.00 cost of repairing the 9 holes in the rental unit.

The Landlord has established a claim for the recovery of the \$120.00 Writ of Possession Fee from the Vancouver Supreme Court. As the Tenant did not comply with the order of possession after having been served, this resulted in the Landlord filing the order and incurring this expense.

The Landlord has established a total monetary claim of \$620.00 consisting of \$240.00 clean up, \$260.00 hole repairs and the \$120.00 writ fee. I grant the Landlord \$25.00 as a partial recovery of the filing fee. The Landlord is granted a monetary order under section 67 for the balance due of \$645.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court.

Conclusion

The Tenant's application is dismissed without leave to reapply.
The Landlord is granted a monetary order for \$645.00.

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: June 29, 2012.

Residential Tenancy Branch