



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, MNR, FF
Tenants: OLC, ERP, RP, RPP, MNDC

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Tenants applied for an order that the Landlords make emergency repairs, general repairs, that they return the Tenants' personal property and that they comply with the Act or tenancy agreement. The Tenants also applied for compensation for damage or loss under the Act or tenancy agreement.

At the beginning of the hearing, the Tenants said their claim for compensation was in part to recover the cost of moving expenses they will have to incur due to rental unit having been found to be an illegal secondary suite (ie. the ground alleged on the One Month Notice which the Landlords seek to enforce). The Tenants said their claim for compensation was for personal injuries and property damage they sustained as a result of a bedbug infestation that the Landlords allegedly failed or refused to address during the tenancy. RTB Rule of Procedure 2.3 states that "*if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.*" I find that the Tenant's claim compensation related to damages arising out of a bedbug infestation is unrelated to the rest of the matters in dispute at this hearing, and accordingly it is dismissed with leave to reapply.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are the Tenants entitled to compensation for moving expenses?

Background and Evidence

The parties entered a tenancy agreement on April 19, 2012 for a month to month tenancy commencing on May 1, 2012 at a rental rate of \$525.00 per month. On June 4, 2012, the Parties entered into a 3 month fixed term tenancy agreement which was to start on June 4, 2012 and expire on October 4, 2012. Rent was increased to \$660.00

per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$262.50.

On May 30, 2012, the municipality hand delivered a letter to the Landlords advising them that an inspection of the property would be done on June 5, 2012 to determine if the rental property complied with the secondary suite by-law. On June 5, 2012, the municipality hand delivered a letter to the Landlords advising them that the rental property did not comply with the secondary suite by-law and that the cooking facilities in the rental unit would have to be decommissioned by June 26, 2012. On June 30, 2012, the Landlords gave the Tenants a letter which advised them that they would be making renovations to the rental unit to comply with the order of the municipality and that the Tenants would have to vacate.

The Tenants said they moved out of the rental property on June 21, 2012 due in part to a bedbug infestation but could not afford to move their belongings which remained in the rental unit. The Landlords claim the Tenants vacated on July 19, 2012 after they gave the Landlords a letter which stated that they would move out provided that the Landlords paid them compensation of \$1,175.00 [which represented \$525.00 for July rent, \$262.50 for their security deposit and \$387.50 for moving expenses]. The Landlords said they agreed to the compensation if the Tenants moved their belongings out by July 31, 2012, however they failed to do so. The Tenants said they were unable to remove their belongings until they received funds from the Landlords to pay for their moving expenses. Consequently, the Landlords sought to recover unpaid rent for August and September 2012 and the Tenants sought to recover compensation for moving expenses and their rent payment for July 2012.

The Landlords claim that they served the Tenant, R.P., in person on August 8, 2012 with the One Month Notice to End Tenancy for Cause dated August 8, 2012 which the Tenants deny.

Analysis

The Tenants claim that the tenancy ended on June 21, 2012 when they vacated. The Landlords claim that the tenancy ended on July 19, 2012 when the Tenants gave them a letter. Given that the Landlords live on the main floor of the rental property, I find that the Landlords knew or should have known that the Tenants had ceased to occupy the basement suite as of June 30, 2012 at the latest (even though their belongings were still there). Consequently, I find that the tenancy ended on June 30, 2012. As the tenancy has ended, I find that it is unnecessary to grant the Landlord's application for an Order of Possession and it is dismissed without leave to reapply.

I find that the Landlords gave the Tenants a letter on June 30, 2012 advising them that they would have to vacate because the rental unit was in contravention of the secondary suite by-law. I find that on or about July 19, 2012, the Tenants gave the Landlords a written proposal that in consideration for a payment by the Landlords of

\$1,175.00 (which included moving expenses of \$387.50), the Tenants would remove their belongings from the rental unit by July 31, 2012 and that the Landlords verbally agreed to this. The Landlords said they did not pay this amount because they believed that the Tenants wanted further compensation for the alleged bedbug infestation however, the Tenants' written proposal clearly states that they did not intend to pursue these claims. In any event, the Landlords said that as of August 4, 2012 they were still prepared to compensate them approximately \$800.00 for their moving expenses and security deposit but did not do so. The Tenants claim that without these funds they could not afford to hire movers to move their belongings.

In the circumstances, I find that the Landlords breached their agreement with the Tenants to contribute to their moving expenses in return for the Tenants moving out and in failing to do so I find that the Landlords contributed to their own losses. In other words, I find that as of July 19, 2012, the Landlords knew that the Tenants were no longer residing in the rental unit and that they intended to move out their belongings by July 31, 2012 only if the Landlords contributed to their moving expenses. In failing to pay the Tenants' moving expenses, I find that the Tenants were prevented from moving their belongings.

Section 7(2) of the Act says that a Party must take reasonable steps to mitigate their damages. In this case, I find that the Landlords were responsible for unpaid rent they incurred for August and September 2012 because they refused to perform the agreement they had with the Tenants. In other words, I find that if the Landlords had paid the Tenants the compensation they agreed to, the Tenants would have moved out on July 31, 2012. Furthermore, I note that this is not a case where the Landlords lost rental income due to an act of the Tenants because they were prohibited by the municipality from re-renting the suite as living accommodations to anyone after June 26, 2012. Consequently, the Landlords' application for unpaid rent for August and September 2012 is dismissed without leave to reapply.

As a further consequence, I grant the Tenants' application for compensation for moving expenses of \$387.50 and the return of their rent payment for July 2012 of \$525.00 on the grounds that the Landlords breached the tenancy agreement on June 30, 2012 when they notified the Tenants that they would have to end their tenancy because the suite contravened the municipal secondary suite bylaw. As neither party made an application for the security deposit, I cannot make an order with respect to it at this hearing.

Conclusion

The Landlords' application is dismissed in its entirety. A Monetary Order in the amount of \$912.50 has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the

Provincial (Small Claims) Court of British Columbia 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: September 17, 2012.

Residential Tenancy Branch