

DECISION

Dispute Codes: CNR, MNDC, OLC, OPT, RR, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for money owed and compensation for damages under the tenancy agreement.

Preliminary Matters

At the outset of the hearing, the tenant said that sometime in mid February, he moved out of the rental unit. He was therefore withdrawing his application to cancel the notice to end tenancy and to obtain an order of possession of the rental unit.

Issues to be Decided

Whether there was a tenancy agreement between the landlord and the tenant?
Whether the tenant is entitled to a monetary order for money owed and compensation for damages under the tenancy agreement?

Background and Evidence

In mid January, JR had a verbal agreement with the landlord to do some renovation work in the basement of the house. The renovations began on January 20, 2008 with the tenant assisting JR in the work. At some point, the landlord and the tenant agreed for the tenant to live in a unit in the lower floor of the house for a monthly rent of \$300.00. This monthly rent was predicated on the tenant providing some gardening services for the property. JR said that he was also hired by the landlord to be the property manager for the house and he drafted a tenancy agreement which was signed by both the landlord and the tenant. The tenancy was to begin on February 1. But the landlord agreed for the tenant to move into the rental unit on January 24 without having to pay for the

period between January 24 and 31. On January 26, the landlord asked JR to deduct the tenant's rent from cost of the renovations. JR agreed and subsequently talked to the tenant who also agreed. On January 31, the landlord attended the Saanich police department to complain about the tenant staying at the house. During this meeting, a police officer viewed a copy of the tenancy agreement signed by the landlord and the tenant. Based on this tenancy agreement, the police informed the landlord of the tenant's rights to live in the unit. On February 2, the tenant returned to the unit to find the lock changed and his possessions thrown outside of the house. JR telephoned the police who attended the property. At that time, the tenant was unable to produce a signed copy of the tenancy agreement. He said that the landlord had located his signed copy of the tenancy agreement and destroyed it. The police referred to their record of having viewed a signed copy of the tenancy agreement on January 31 and again informed the landlord of the tenant's rights and ordered her to give him a key to the new lock. The tenant did re-enter the unit. He said that on February 3, the landlord turned off the electrical power to his unit and from February 6 to 9, the landlord turned on loud music in her unit. In mid February, the tenant moved out of the rental unit because he found the living conditions to be untenable.

Issue #1 – Whether there was a tenancy agreement between the landlord and the tenant?

The landlord maintained that she had no tenancy agreement with the tenant. Specifically, JR had rented the unit to the tenant without her knowledge or permission and when she found out about the tenant's occupation of the unit, she became scared and tried to get him out. The landlord also maintained that she had never signed a tenancy agreement. She explained that she has limited comprehension of the English language and would not have signed any document without consulting either a friend or social worker.

The tenant maintained that there was a tenancy agreement between the landlord and him and that they had both signed a tenancy agreement. He said that the landlord had entered his unit, took his copy of the signed tenancy agreement and destroyed it. JR testified in support of the tenant's assertions in this regard. He said that the landlord had authorized him to rent the unit to the tenant. Furthermore, he drafted the written tenancy agreement and witnessed the landlord and the tenant signing this document.

I note that the police report dated February 2, 2009 stated that on January 31, 2009, the landlord attended the police department at Saanich and a Constable viewed a signed copy of the tenancy agreement between the landlord and the tenant. At that time, the landlord did not deny that she had signed the tenancy agreement. I find that the landlord would have stated to the police that she did not sign the tenancy agreement. Furthermore, on February 6, 2009, the landlord served the tenant with a notice to end tenancy. The landlord explained that she had served such a document on the tenant based on advice from the police and the Residential Tenancy Branch. I find that the landlord would not have sought advice from the Residential Tenancy Branch if there was no existing tenancy. Based on the above evidence, I find that there was a tenancy agreement between the landlord and the tenant.

Issue #2 – Whether the tenant is entitled to a monetary order for money owed and compensation for damages under the tenancy agreement?

The tenant is seeking to recover \$800.00 as money owing on his labour in renovating the landlord's house and \$300.00 February rent as his loss of quiet enjoyment for the unit.

Money Owed for Labour in Renovating the House

The tenant maintained that he and the landlord had an agreement whereby his rent would be deducted from the costs of his labour in performing certain work for

the house. I find that the tenant was a sub-contractor working for JR in renovating the landlord's house. My finding is based on the following. Both the landlord and the tenant have made complaints to the police about this tenancy. From such complaints, the police compiled a report dated February 2 which was submitted as evidence. In this report, the police stated that JR was hired by the landlord to renovate the downstairs of the house and that the tenant was a sub-contractor for JR. Furthermore, in a written statement, JR said that the landlord had pestered him to let her deduct the tenant's rent from the cost of the labour in renovating the house. The above evidence indicates to me that the landlord's agreement was with JR and not with the tenant. Based on the above, I find that the tenant was a sub-contractor for JR. I also find that the dispute for money owed to the tenant for his labour in renovating the house is one between JR and the tenant. Accordingly, I dismiss the tenant's application to recover \$800.00 as money owed for his labour in renovating the landlord's house.

Loss of Quiet Enjoyment

The tenant is seeking to recover the \$300.00 February rent as compensation for his loss of quiet enjoyment of his tenancy during this period.

The *Residential Tenancy Act* defines "rent" as a value given by the tenant to the landlord in return for the right to possess a rental unit. In this case, the landlord and the tenant had agreed for the rent to be deducted from the tenant's labour for renovating the house. I therefore find that the tenant has paid the landlord the monthly rent of \$300.00 for February.

The tenant gave the following evidence with respect to his loss of quiet enjoyment during this tenancy. On at least 4 occasions, the landlord entered the tenant's unit without notice or permission. On February 2, the landlord changed his lock and threw his possessions outside. The tenant reported this to the police and the police ordered the landlord to give him a key to the new lock. When the

tenant returned, he found a barrier that was built in the doorway to be torn down allowing full access to the unit. On February 3, the landlord turned off the power to his unit. From February 6 to 9, the landlord turned on loud music. In mid February, the tenant found the living conditions in the unit to be so unbearable that he moved out. The tenant's assertions in this regard were supported by JR's testimony and a police report dated February 2. As well, the landlord did not dispute any of the tenant's testimony in this regard. Based on the above, I find that the tenant's right to right enjoyment has been breached throughout his short tenancy.

In view of the seriousness of the situation, the degree to which the tenant was unable to use the unit and the duration which the situation existed, I allow the tenant's claim of \$300.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I therefore grant the tenant an order under section 67 for \$350.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 10, 2009.