Decision

Dispute Codes: MNDC, OLC, RP, RPP, AS, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, orders instructing the landlord variously to comply with the Act / make repairs to the unit / return the tenant's personal property, in addition to allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld and finally, recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began December 1, 1979. Currently, rent in the amount of $1,285.00 is payable on the first day of the month. A security deposit of $200.00 was collected on November 15, 1979.

Following dissolution of the society that had originally entered into the tenancy agreement with the tenant, the current landlord assumed its role on July 1, 2008. In a written submission the landlord describes itself as follows:

> ….a non-profit housing society and a registered charity that has a mandate to provide safe affordable housing for veterans, seniors, families, and persons with disabilities on limited income.

The tenant takes the position that the former landlord "was always aware of and often assisted in roommate / subletting matters." She alleges that the current landlord

contravened this understanding by preventing “VZ” from entering the tenant’s unit in August 2009. Accordingly, the tenant is applying to recover loss of rental income for September and October 2009 in the total amount of $3,000.00 (2 x $1,500.00 per month).

Further, in her application the tenant seeks an order allowing her to assign or sublet her unit, claiming that the landlord’s permission has been unreasonably withheld.

Considerable documentary evidence was submitted by both parties in relation to the above aspect of the dispute.

The tenant also seeks recovery of $16.80 for the cost of providing the landlord with a key to a lock on the entrance door to her unit. Evidence submitted by the tenant includes a letter to her from the landlord dated August 14, 2008, in which the landlord states “we do have a key for your townhouse in our secured key lock box.” Related evidence submitted by the landlord includes a memo dated September 25, 2009 from the site managers to the general manager; in the memo it is stated, in part:

> During the rekeying process….it was noted that [the tenant’s unit] had a non-standard secondary lock system on the front entrance door. The locksmith suggested to me that due to the quality of the non-standard secondary lock we try and keep it in place. As our key lock box did not contain a key for this non-standard secondary lock I gave the tenant the option of providing us with a key to the non-standard secondary lock or we would remove it and replace it with our standard issue deadbolt. **The tenant provided us with a key**.

Further, the tenant seeks to recover $18.00 for the cost of numbers which were removed from the address at the front of her unit. In the alternative, she seeks the return of these numbers.

Finally, the tenant seeks to have the landlord make repairs to a window in her unit.

In regard to the dispute around the address numbers and repair of a window, as above, during the hearing the parties exchanged views on these matters and undertook to achieve a resolution.

Analysis

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

- that the landlord will return the 3 address number “1s” (including screws) to the tenant which were previously removed from the address outside her unit.
- that the tenant will complete and submit to the landlord a Repair Request form with regard to repair of the window in her unit;

Pertinent to the aspect of this dispute which concerns the cost of a key provided by the tenant to the landlord, section 25 of the Act addresses **Rekeying locks for new tenants**, as follows:

> 25(1) At the request of a tenant at the start of a new tenancy, the landlord must
>
> (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
>
> (b) pay all costs associated with the changes under paragraph (a).
>
> (2) If the landlord already complied with subsection (1)(a) and (b) at the end of the previous tenancy, the landlord need not do so again.

Further, section 31 of the Act addresses **Prohibitions on changes to locks and other access**, and provides in part, as follows:

31(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

In addition to the absence of a receipt in evidence to support the tenant's claim for the cost of the key in question, there is no evidence before me that the tenant made a formal request, or received consent in writing from the landlord to "change a lock or other means that gives access to his or her rental unit…" Accordingly, I dismiss the tenant's application for compensation for the cost of the subject key.

In relation to the dispute around assignment and subletting, section 34 of the Act addresses **Assignment and subletting**, as follows:

34(1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1). *[emphasis added]*

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

Residential Tenancy Policy Guideline #19 speaks to **Assignment and Sublet** and provides in part, as follows:

It is up to the original tenant to seek the landlord's consent – the proposed new tenant is not a party to the tenancy agreement unit until such time as the landlord has agreed to assignment or sublet, and the formal transfer is made. A landlord is not required to give consent if not asked to do so. **Once the request is made,**

the landlord's consent cannot be unreasonably or arbitrarily withheld if the tenancy agreement:

- **has a fixed term of 6 months or more**, or
- is in respect of a manufactured home site where the manufactured home and the site are not rented from the same landlord (although a landlord may require the request to be in the form set out in the Manufactured Home Park Tenancy Regulation).

A landlord is not required to give consent to an assignment or sublet other than those specified. *[emphasis added]*

If a landlord arbitrarily or unreasonably withholds consent to assign or sublet the tenant's interest in a tenancy agreement, contrary to the provisions of the Legislation, the tenant may apply to an arbitrator for an order that the tenancy agreement is assigned or sublet. In hearing such an application, the arbitrator would consider whether the request had been given in writing, whether the landlord has properly responded to the request, and whether the reasons given for refusing the request were reasonable.

The evidence in the circumstances of this dispute is that the tenancy is not a fixed term tenancy but, rather, a month-to-month tenancy.

The full text of the legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Further to all of the above, the rental agreement entered into by the tenant and the previous landlord addresses assignment / subletting as follows:

I/We agree not to assign or sublet the premises in whole or in part without first obtaining written consent of the Landlord or his Manager.

As well, in the rental agreement under the heading, “Conditions of Tenancy,” it is stated as follows:

1. The premises shall be used exclusively as the private residence of the tenant and the other persons named in this application.

The tenant submitted into evidence a copy of the letter written by the previous landlord’s manager concerning payments for hydro in 2003. However, I find the letter sheds very limited light on matters pertinent to assignment or subletting. Simply, in the letter there is reference to the tenant as “our tenant” and reference also to “the period of your occupancy” on the part of “SM,” evidently a person who had lived in the tenant’s unit for a period of time. A further document entitled “Rental Agreement – Shared Accommodation” was also entered into evidence and is referenced more fully below.

By letter dated March 24, 2008, the landlord informed the tenant it had become aware that she was “subletting [her] townhouse to two people” and that she had “been advertising [her] townhouse for rent.” In its letter the landlord informs the tenant that subletting is not permitted. In its written submission dated October 15, 2009, the landlord goes on the state, in part as follows:

> The [landlord] discovered that [the tenant] was holding herself out to prospective tenants as the “Landlord” of her unit, was subletting individual bedrooms to students and others, was using a couple of the bedrooms as personal locked storage, and was not actually living or sleeping in the unit herself, and was in effect making a profit from the rent she was collecting!

As mentioned above, evidence submitted by both parties includes a copy of the “Rental Agreement – Shared Accommodation,” signed by “BR” and “AZ,” each of whom is referred to in the document as a “resident,” which is defined in this document as follows:

> “Resident” means the person who intends to share the premises with the Tenant, pays rent and follows verbal instructions from the Tenant regarding domestic procedures and rules.

The document defines “Tenant” in part, as follows:

> ….the person or persons who currently lease the premises….from the Landlord….

The above document appears to have been created or at least sanctioned by the former landlord, as the former landlord is specifically named in it as the “Landlord.” I note in this document the reference to a “Resident” as the person who “intends to share the premises” with the “Tenant.” “Base rent” is defined in the document as “that share of the tenant’s current rent paid to the Landlord exclusive of utility or other charges.” *[underline emphasis added]*

Arguably, it is implicit in this document that, while the “Tenant” shares the unit with other “Residents,” she herself will also make daily use of the unit as her private residence; in other words, the “Tenant” and the “Resident” will be roommates. However, it is the landlord’s position that the tenant is not a roommate within the generally understood meaning of the term, that the tenant’s functional private residence is located elsewhere, and that her use of the unit is limited to storage and a source of rental income.

While the above agreement is shown as having been entered into on January 15, 2009 with respect to the term from January 1, 2008 to May 1, 2009, “BR” testified in the hearing that the living arrangement ended at the close of February 2009. “BR” testified during the hearing that monthly rent of $1,400.00 was shared equally between her and “AZ.” Further, she stated that during their entire 13 month stay in the unit, the tenant had not slept there, although she attended the unit to collect mail and to do gardening. In a hand written letter from the tenant to “BR” and “AZ” dated January 1, 2008, the tenant refers to herself as the “absentee roommate,” and the tenant testified during the hearing that months go by between occasions when she sleeps at the unit.

In a written submission from “AZ” entered into evidence by the landlord, “AZ” states that she and “BR” became aware that the unit was available via craigslist. She also states that a security deposit of $700.00 was collected by the tenant. Further, in her

submission “AZ” describes their dealings with the tenant towards and after the end of their residency in relation to the security deposit. In short, the security deposit was not returned.

Deciding on the nature of the agreement that existed between the tenant and “BR” and “AZ” is not directly before me. However, either party has the option to apply for dispute resolution in the event that there are unresolved issues between them concerning the security deposit. In this regard section 38 of the Act speaks to **Return of security deposit and pet damage deposit**.

Whatever the agreement between the tenant and “BR” and “AZ,” it appears to resemble the agreement anticipated between the tenant and “VZ.” Specifically, it is understood that the tenant and “VZ” had agreed to monthly rent in the amount of $1,500.00, and the tenant collected a damage deposit of US $700.00 from “VZ” on August 22, 2009. A copy of the receipt issued by the tenant for the security deposit refers to it in part as “deposit (damage hydro) for rent….” and is signed by the tenant.

After reviewing the evidence, I am not persuaded that the landlord prevented “VZ” from entering the tenant’s unit in August 2009. “VZ” and / or her parents had the option of lodging a complaint with police in the event they felt there had been improper conduct on the part of the landlord or any of the landlord’s agents in this regard. There is no evidence that such a report to police was contemplated.

However, evidence submitted by the landlord includes e-mail exchanges between the landlord and “VZ’s” father. In his e-mail, “VZ’s” father describes some of his dealings with the tenant and states that he has filed a police report….

> complaining that [the tenant] conducts fraud with the stundents [sic] down payment by pretending she is the house owner and fully entiteled [sic] to rent the place in shared or single tenantship.

As in the case of the agreement between the tenant, “BR” and “AZ,” the agreement between the tenant and “VZ” is not directly before me. Once again, either party has the

option of filing an application for dispute resolution in regard to unresolved issues between them. Issues to be decided in such a dispute might include whether the tenant and "VZ" had entered into a tenancy agreement, and whether the tenant has any entitlement to a monetary order against "VZ" for loss of rental income.

The issues that remain directly before me are first, whether the tenant is entitled to a monetary order against the landlord as compensation for loss of rental income with regard to "VZ," and second, whether the landlord's permission to assign or sublet has been unreasonably withheld.

As to the first issue, as earlier stated, the proposed agreement was between the tenant and "VZ." There is no evidence that the landlord was a party to that agreement. Accordingly, I dismiss the tenant's application for a monetary order against the landlord as compensation for loss of rental income.

And as to the second issue, there is no documentary evidence before me that the tenant made a written request for consent from either the previous landlord or the current landlord to assign or sublet her unit. Before permission can formally be withheld, a request must first formally be made. Accordingly, I dismiss the tenant's application for permission to assign or sublet because the landlord's permission has been unreasonably withheld.

Conclusion

With the exception of issues which were resolved between the parties during the hearing, pursuant to the above I hereby dismiss all aspects of the tenant's application.

DATE: November 4, 2009

_____

Dispute Resolution Officer