

## **DECISION**

**Dispute Codes:** MNDC and FF

### **Introduction**

This application was brought by the tenants seeking a Monetary Order for the return of six weeks rent after the rental unit was found to be uninhabitable at the scheduled time of move in. The tenants also seek a \$5 NSF fee as the landlord cancelled the cheque returning the rent.

In addition, as the applicant is the father of the tenant who initially saw and was to occupy the rental unit, I have exercised my discretion under section 64(3)(c) of the Act to include the name of the daughter as co-application. The father is a co-applicant by virtue of his having paid the rent.

Despite having been served with the Notice of Hearing by registered mail sent on September 22, 2009 and received the following day, the landlord did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

### **Issues to be Decided**

This application requires a decision on whether the rental unit had deteriorated between the time it was shown and the move in date to a degree that warranted the tenants' rescinding the rental agreement.

## **Background and Evidence**

This subject rental unit was offered under a sub tenancy in mid June 2009 when it was viewed by the applicant daughter. In the interim, the landlord interceded in the matter by attending at the applicant father's home on July 1, 2009 at which time she requested and he provided her with a cheque for \$1,140 in payment of half the rent for July and half of August 2009. The balance was to be paid by a roommate of the applicant.

When the applicants arrived at the rental unit on July 4, 2009 intending to move in, they found the rental unit to be in a state of disarray, apparently having been trashed by the previous tenant who had offered the sub tenancy.

According to evidence submitted by the applicant father, they found broken furniture, broken kitchen cabinets and doors, garbage, cigarette butts on the floor, old food in the cupboards and fridge, etc. When the landlord attended, she agreed that the suite was uninhabitable, that she would need the summer to rehabilitate the rental unit and wrote a post-dated cheque to reimburse the tenants. The tenants had offered to postpone the move-in for two weeks to allow the landlord time to prepare the unit, but the landlord declined.

The applicant father submitted into evidence a copy of the cheque he had given to the landlord for \$1,140 on July 1, 2009 and a copy of the landlord's cheque post-dated to July 30, 2009 on which she had placed a stop payment order.

As a matter of note, the applicant daughter's roommate had sent a cheque to the landlord in the interim, but had stopped payment on it when she learned that the rental unit had not been fit for occupancy.

## **Analysis**

Section 32 of the *Act* provides, in part, that:

- (1) A landlord must provide and maintain residential property in a state of decoration and repair that
  - (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I accept the evidence of the applicant father that:

1. The rental unit was not in a state that made it suitable for occupation by tenants at the time the his daughter was prepared to move in on July 4, 2009 and would have required considerable time for remediation;
2. The landlord saw the rental unit at the time and concurred that it was not suitable for occupancy;
3. The landlord issued a cheque to return the rent paid in advance and later stopped payment on the cheque.

I find that by attending at the applicants' home to pick up the prepaid rent, the landlord created a rental agreement with the applicants that superseded the pending agreement with the previous tenant.

I further find that the landlord breached that agreement, made by her acceptance of the rent in advance, by failing to provide the applicants with a habitable rental unit as it was when first viewed by the applicant daughter in mid June.

While the contract well may have been frustrated by conduct of the original tenant's treatment of the rental unit at the end of his tenancy, that burden cannot be ascribed to the applicants.

I find the landlord must return the prepaid rent to the applicants in the amount of \$1,140 plus the \$5.00 bank charge they had to pay as a result of the landlord stopping payment on the cheque. I further find that the applicants are entitled to recover the \$50 filing fee for this proceeding from the landlord. These awards total \$1,195.00.

## **Conclusion**

The applicants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,195.00 for service on the landlord.

January 18, 2010.