



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC and FF

Introduction

This hearing was scheduled to address the Tenant's application for a monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask questions of the other party, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for being required to vacate the rental unit, pursuant to section 51(1) of the Act and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2007 and that it ended on May 30, 2008. The parties agree that the Tenant was required to pay monthly rent in the amount of \$1,000.00.

The Landlord contends that they have a written, fixed term tenancy agreement, which ended the tenancy on August 01, 2008. The Landlord stated that she submitted a copy of the tenancy agreement in evidence, although she acknowledged that she did not serve a copy of the agreement on the Tenant when she served other documents

relating to this Application for Dispute Resolution to the Tenant. There was no written tenancy agreement before me at the time of the hearing.

The Tenant stated that she did not recall signing a fixed term tenancy agreement, although she does recall giving the Landlord a letter stating that she intended to move into the rental unit and that she agreed to pay monthly rent of \$1,000.00.

The Landlord was given until October 17, 2008 to serve another a copy of the fixed term tenancy agreement on the Tenant and to submit another copy to the Residential Tenancy Branch. Conversely, the Tenant was given until October 30, 2008 to serve a written response to that evidence on the Tenant and to submit a copy of the written response to the Residential Tenancy Branch.

On October 17, 2008, the Landlord submitted a copy of a fixed term tenancy agreement. The Tenant's signature on the agreement is similar to the signature on her Application for Dispute Resolution.

The Landlord and the Tenant agree that the Landlord served the first page of a Two Month Notice to End Tenancy pursuant to section 49 of the Act to the Tenant's son on May 01, 2008. The Tenant acknowledges receiving the first page of the Notice. A copy of this document was not submitted in evidence by either party prior to the hearing.

The Landlord and the Tenant agree that the Landlord amended the Two Month Notice to End Tenancy by changing it to a Three Month Notice to End Tenancy. The parties agree that the Notice indicated that the Tenant was required to vacate the rental unit by August 01, 2008.

The first page of the Notice to End Tenancy was submitted to the Residential Tenancy Branch by the Landlord on October 17, 2008. This document supports the evidence provided by both parties at the hearing. A copy of the second page of a blank Two Month Notice to End Tenancy was also submitted to the Residential Tenancy Branch by the Landlord on October 17, 2008. This document is irrelevant, as both parties acknowledge that the second page of the Notice was not served on the Tenant.

The Landlord stated that she served the Tenant with a letter at the same time she served the Notice to End Tenancy. The Landlord stated that the letter, which was not submitted in evidence, indicated that she was ending the tenancy because the tenant had a dog and was smoking in the rental unit, which the Landlord contends contravenes their written tenancy agreement.

The Tenant stated that she did not receive a letter from the Landlord regarding her reasons for ending the tenancy.

The Tenant and the Landlord agreed that the parties mutually agreed to end this tenancy on May 30, 2008, and that the tenancy did end on that date.

On October 17, 2008, the Landlord submitted an undated document, which outlines her reasons for ending the tenancy and outlines some events that occurred after she served the Notice to End Tenancy. She also submitted a copy of a letter of complaint from an occupant who was living below the Tenant in July of 2008. She also submitted a document that outlines the condition of the rental unit at the end of the tenancy. These issues were not relevant to the issues in dispute and are not being considered as evidence in this matter.

Analysis

I find that the Tenant and the Landlord entered into a fixed term tenancy agreement that began on August 01, 2007 and was scheduled to end on August 01, 2008. I based this conclusion on the tenancy agreement that was submitted in evidence after the hearing was concluded, which has a signature on it that is remarkably similar to the Tenant's signature. This tenancy agreement indicates that the fixed term tenancy agreement is renewable or reverts to a month-to-month tenancy agreement at the end of the fixed term.

I find that the Tenant did receive the first page of a Notice to End Tenancy pursuant to section 49 of the *Act*. Although the Tenant did not receive the second page of the Notice, I find that she vacated the rental unit on the strength of the Notice.

Although the Landlord did not comply with the *Act* when she served the Notice to End Tenancy on an incomplete form, I find that the Landlord's actions effectively ended this tenancy pursuant to section 49 of the *Act*. I find that the Landlord benefited from the provisions of section 49 of the *Act* and that the Tenant should, therefore, benefit from the provisions of section 51 of the *Act*.

In these particular circumstances, I award the Tenant compensation under section 67 of the *Act*, rather than section 51 of the *Act*. Section 67 stipulates that a party may be ordered to compensate another party when the second party suffers damage or loss because the first party failed to comply with the *Act*. I have relied on section 51 of the *Act* as a guideline in determining that the Landlord must pay the Tenant the equivalent of one-months rent for ending this tenancy, which is \$1,000.00. This is the amount that the Landlord would have had to pay the Tenant if she had complied with the *Act* when she attempted to end this tenancy pursuant to section 49 of the *Act*.

I am satisfied that a monetary Order is the appropriate resolution to this matter as a Landlord can not end a tenancy and then benefit from failing to end that tenancy in accordance with the *Act*.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$1,050.00, which is comprised on \$1,000.00 in compensation for being required to move and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for the amount \$1,050.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: October 30, 2008