

Decision

Dispute Codes:

CNL

FF

MNDC

Introduction

I have been delegated authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Tenant’s application under sections 49(8), 72(1) and 67 of the Act.

All of the information in the case file was reviewed and the hearing for this Application proceeded on its merits. Both parties gave affirmed evidence at the Hearing.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

Does the *Residential Tenancy Act* apply to this Application?

Should the Tenant succeed in her application to cancel the Notice to End Tenancy given for Landlord’s use of the property?

Is the Tenant entitled money owed or compensation for damages or loss under the Act, *Residential Tenancy Regulations*, or the Tenancy Agreement?

Background and Evidence

The Tenant and Landlord agreed on the following issues:

- The tenancy started on June 1, 2003;
- There was no written Tenancy Agreement;
- The Tenant moved out of the rental unit on October 2, 2008;
- Monthly rent for the rental unit was \$800.00 per month, payable on the first of each month. There were no arrears in rent.

Tenant's evidence

The Tenant made a security deposit of \$350.00 on June 1, 2003. The Landlord agreed to allow the Tenant to deduct the security deposit and interest from the amount owing for September's rent. The Tenant paid rent in the amount of \$440.00 for the month of September. The Tenant did not pay rent for the month of October, 2008.

The Notice to End Tenancy for Landlord's Use dated August 1, 2008, was effective October 31, 2008. The Tenant found a place to rent, and initially verbally advised the Landlord that she would be moving out on October 1, 2008. The Tenant later found that she could not get time off work, and asked to extend the move-out date to October 4, 2008. The Landlord agreed. The Tenant moved out on October 2, 2008.

The Landlord told the Tenant that the rental suite was going to be painted and renovated in October, 2008, in order to get the suite ready for his daughter, who would be moving in after it had been painted. To date, the rental suite has not been painted or renovated and is still empty and not occupied by the Landlord's daughter.

Landlord's evidence

The Landlord disputed that the Tenant paid a security deposit to the Landlord, but agreed that the Tenant paid \$440.00 for September's rent and was not in arrears.

The Landlord stated that the close family member has not moved in to the rental unit due to family illness.

Analysis

I find that the *Residential Tenancy Act* does apply to this Application. Section 1 of the *Act* defines a tenancy agreement as “an agreement, whether written or oral, express or implied, between and landlord and a tenant respecting possession of a rental unit”. The Landlord accepted rent for the unit, and I am satisfied that there was an oral tenancy agreement in place. Section 2 of the *Act* states that the *Act* applies to tenancy agreements, rental property and other residential property.

In her Application for Dispute Resolution, the Tenant applied under section 49(8) of the *Act* to cancel the Notice to End Tenancy dated August 1, 2008. Section 49(8) of the *Act* states, “A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.” The time limit has past, and I therefore dismiss this part of the Tenant’s Application.

The *Act* states that a landlord may end a tenancy if, in good faith, the landlord or a close family member intends to occupy the rental unit (section 49(3)). Section 49(2) of the *Act* deals with the effective date of the notice and states that the notice to end the tenancy is effective on a date that must be:

- a) not earlier than 2 months after the date the tenant receives the notice,
and
- b) the day before the day in the month, that rent is payable under the
tenancy agreement.”

The notice was given to the Tenant on August 1, 2008. In accordance with the above, I find the earliest effective date of the end-of-tenancy was October 31, 2008.

Section 51 of the *Act* states that a tenant who receives notice under section 49 is entitled to receive from the landlord on or before the effective date of the notice an amount that is the equivalent of one month’s rent payable under the tenancy

agreement. In this case, the tenant paid rent for the month of September, 2008 and the landlord did not provide the tenant with the equivalent of one month's rent. Therefore, I find the landlord owes the tenant \$800.00 under section 51 of the Act.

I accept the Tenant's evidence that the rental unit has not been painted or renovated and find that steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period and therefore under section 51(2) of the Act, I find the Landlord must pay the tenant the equivalent of double the monthly rent payable under the tenancy agreement, being \$1,600.00.

Conclusion

I hereby grant the Tenant a monetary order under Section 67 of the Act for \$2,450.00, comprised of one month's rent under Section 51(1) and two month's rent under Section 51(2) of the Act, together with \$50.00 for reimbursement of the Tenant's fee to file the Application for Dispute Resolution. This order must be served on the Landlord and may be filed in the British Columbia Provincial Court (Small Claims) and enforced as an order of that Court.

January 8, 2009
