



Dispute Resolution Services

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

DECISION

Dispute Codes: MNDC

Introduction

This application was brought by the tenant seeking compensation equivalent to two month's rent under section 51(2)(b) of the *Act*. This section provides for such an award where the landlord has not used the rental unit for a purpose stated on a Notice to End Tenancy for landlord use for at least six months starting within a reasonable period after the effective date of the notice.

This matter was originally set for hearing on November 27, 2008 but was adjourned to the current date to accommodate the schedule of the landlord's legal counsel.

Issue(s) to be Decided

This matter requires a decision on whether the applicant was a tenant, and if so, whether the tenant has proven her claim to a degree that would entitle her to the compensation sought.

Background and Evidence

The applicant and her two children moved in to the rental unit on September 1, 2005 with an existing tenant, her spouse, who had been living there with his mother. Rent was \$1,100 per month and the security deposit was returned to her spouse who left the rental unit and the marriage in February of 2008. During the tenancy, the applicant had two more children.

By letter of March 1, 2008, the landlord and his spouse advised the applicant of their intention to take over the rental unit for personal use, authorized her to remain until April 1, 2008 and advised that the March rent should be paid by March 3, 2008 by cash requested that she vacate by April 1, 2008.

The tenant replied by letter of March 3, 2008 and requested that the landlord provide her with an official Notice to End Tenancy. The landlord did so on March 8, 2008 setting an end of tenancy date of May 1, 2008 which would automatically correct to May 31, 2008 to conform with the two month time requirement of notice under section 49 of the *Act*.

In the interim, the landlord's spouse and the tenant had a telephone conversation during which the landlord's spouse offered to reconsider, and asked the tenant to sign a rental agreement. By her own accounting, the tenant said she would consider signing the rental agreement when the landlord gave her the eviction notice. The landlord said she would prefer to have the tenant consider the rental agreement first, but the tenant pressed to have the notice served.

The tenant wrote on March 13, 2008 advising the landlords that she would move out by May 1, 2008 if they returned her March rent and waived rent for April. He landlords replied on March 23, 2008 stating that they would like to take possession June 1, 2008.

By letter of March 31, 2008, the tenant gave notice that she would be vacating on May 3, 2008, would withhold the April rent as her entitlement under section 51(1), and made prorated payment for the first three days of May.

Some time in late October, the applicant, who had moved to a nearby rental unit, met a new tenant who had moved in to the subject rental unit, she believed on October 11, 2008. The landlord stated the date was October 15, 2008 and, in either case, it was about two to three weeks short of the six months referred to in section 51 of the *Act*.

The landlord stated that he had originally sought to begin the tenancy for November 1, 2008, but conceded to the new tenant's pressing need for accommodation, but received no rent for the latter half of October.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served as he anticipated his son and wife who lived in Campbell River would have need to move in to the rental unit.

As a matter of note, the rental unit had not been rented from the time the applicant tenant left on May 3, 2008 to mid October 2008 and the tenant did not make application to have the Notice to End Tenancy set aside.

Analysis

Legal counsel for the landlord advanced the proposition that there was, in fact, no tenancy. The primary tenant had moved out, and, all preliminary negotiations aside, it was quite in order for the landlord to require the tenant to sign a rental agreement.

I concur.

The applicant pressed for service of the Notice to End Tenancy concurrently or in lieu of her considering and signing a tenancy agreement.

I find that, with the primary tenant having left, the applicant become an occupant rather than a tenant and by her own choice declined to consider the landlords' offer to enter into a rental agreement.

Conclusion

Accordingly, the application is dismissed without leave to reapply. Having found that the applicant was not a tenant, I find that I do not need to review in detail the merits of the claim for two months rent to the extent that I would if she had signed the rental agreement.

As the application has not succeeded, the applicant remains responsible for her own filing fee.

January 15, 2009.

Dispute Resolution Officer