

## **DECISION**

**Dispute Codes:** MT, DRI, CNL, MNDC, FF, OPC, MNR, MNDC

### **Introduction**

This hearing dealt with a cross applications by the parties. The tenant made an application 1) to allow her more time to make an application to cancel a notice to end tenancy; 2) to cancel a notice to end tenancy; 3) dispute an additional rent increase. The landlord made an application for an order of possession and a monetary order for loss of income and damages.

### **Preliminary Matter**

The tenant withdrew her application to dispute an additional rent increase as it was established during the hearing that the landlord did not give her a notice for rent increase. I therefore dismiss the tenant's application in this regard.

### **Issues to be Decided**

1. Whether there are serious and compelling reasons to warrant an extension of time for the tenant to make an application to cancel a notice to end tenancy?
2. Whether the landlord is entitled to a monetary order for loss of income and damages?

### **Background and Evidence**

The tenancy started on October 1, 2000. A monthly rent in the amount of \$610.00 is payable in advance on the first day of each month. On January 1, 2009, the landlord served the tenant with a notice to end tenancy for landlord's use of property with an effective date of February 28, 2009.

## **Analysis**

### **Issue #1 – Whether there are serious and compelling reasons to warrant an extension of time for the tenant to make an application to cancel a notice to end tenancy?**

The tenant acknowledged receiving the notice to end tenancy on January 1, 2009. Section 49 of the *Residential Tenancy Act* provides a 15 day time frame for the tenant to file an application to dispute a notice to end tenancy for landlord's use of property. In this case, the tenant did not file an application to dispute the notice until February 27, 2009. The tenant explained that she has been hospitalized since March 22. When asked what had prevented her from filing the application before March 22, the tenant said that she had been ill and going from doctor to doctor. When asked if she could provide some medical evidence to support her claim, the tenant became evasive as to if and when she had obtained a doctor's note. Based on the above, I find that the tenant has not provided any serious and compelling reasons to warrant an extension of time for her to file an application to cancel the notice to end tenancy. I therefore dismiss the tenant's application in this regard.

During the hearing, the landlord requested an order of possession. Based on the above facts, I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia.

### **Issue #2 – Whether the landlord is entitled to a monetary order for loss of income and damages?**

#### **Loss of Income**

The tenant is currently still living in the rental unit. The landlord is therefore seeking recovery of a loss of income for the months of March and April in the amount of \$1220.00. I find that the tenant should reasonably have known that the landlord could not re-rent the unit while she was still in residence and I therefore allow a claim of \$1220.00.

### Damages

The landlord said that DD, the new caretaker for the building, was to move into the unit on February 28 after the tenant moved out. However, because the tenant failed to move out on that date, he had to provide alternative accommodation for DD. The landlord is claiming for the costs of such accommodation as follows: \$252.00 for two night hotel accommodation; \$2800.00 for March and April rent; and \$400.00 for utility charges for the months of March and April.

DD testified during the hearing and he gave the following evidence regarding the landlord's claim for damages. He stayed at a hotel for two nights and the landlord paid for such stay. DD did not provide the amount of the costs for his two night hotel stay. At the same time, no documentary evidence was submitted to support the landlord's claim for DD's two night hotel accommodation. Based on the above, I dismiss the landlord's claim for \$252.00.

DD said that he rented a unit close by for March and April at a monthly rent of \$1400.00. No documentary evidence was submitted to support the landlord's claim for the amount of rent for these two months. Based on the above, I dismiss the landlord's claim for \$2800.00.

DD said that while staying at the rental unit, he has incurred utility charges. When asked what the amount was, he said that he had "no total handy". Then, he said that he thought it was over \$250.00. Later, he said that it was around \$400.00. No documentary evidence was submitted to support the landlord's

claim for utility charges for March and April. Based on the above, I dismiss the landlord's claim for \$400.00.

### Tenant's Compensation

Section 51 of the *Residential Tenancy Act* states that a tenant who receives a notice to end tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51 further states that if this amount of compensation was not withheld from the tenant's last month rent, the landlord must refund the amount. In this case, the landlord said that the tenant had paid the \$610.00 for each of the months of January and February. Furthermore, no evidence was adduced to indicate that the landlord had compensated the tenant the amount of \$610.00 as required by Section 51 of the *Act*. The tenant is therefore entitled to recovery of compensation in the amount of \$610.00.

### Conclusion

Based on the above, I find that the landlord has established a total claim of \$1220.00 in loss of income. The landlord is also entitled to recovery of the \$50.00 filing fee. I also find that the landlord must refund one month's rent in the amount of \$610.00 to the tenant. I grant the landlord an order under section 67 for the balance due of \$660.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.