

DECISION

Dispute Codes:

CNC, FF

Introduction

This is the Tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use, and to recover the cost of the filing fee.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Should the 2 Month Notice to End Tenancy issued July 14, 2009, be cancelled?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

The Tenant gave the following testimony:

- The tenancy began as an eight month lease. At the end of the term, the tenancy continued on a month-to-month basis.
- There is no written tenancy agreement.
- The Tenants were aware that the Landlord was planning on demolition and knew at some point they would have to end the tenancy.
- The Notice to End Tenancy states that the Landlord has all necessary permits and approvals required to demolish or repair the rental unit, but the Landlord did not have the necessary documents when she issued the Notice to End Tenancy.
- The Tenants are actively looking for alternate suitable accommodation, but do not wish to be forced out earlier than the legislation allows.

The Landlord gave the following testimony:

- At the end of the eight month lease, the Landlord agreed to extend the term for a further fixed term of two months and reduced the Tenants' rent from \$3,000.00 per month to \$2,700.00 per month. The two months extension has expired.
- There is no written tenancy agreement between the parties.

- At the time of issuing the Notice to End Tenancy for Landlord's Use, the Landlord had filed an application with the City of Vancouver and had received a letter advising that the application had been received.
- On September 3, the City of Vancouver issued a development permit to the Landlord for construction of a one-family dwelling.

Analysis

The Landlord testified that the tenancy was a fixed term tenancy, which has expired. The Tenant testified that the tenancy is a month to month tenancy. There is no written tenancy agreement and the parties do not agree to the terms of their verbal agreement. Pursuant to Section 44(3) of the Act, the tenancy is deemed to be a month-to-month tenancy with the standard conditions. In any event, the Landlord did not issue the Notice to End Tenancy for breach of a material term (i.e. failing to vacate the rental unit at the end of a fixed term lease).

The Landlord's cause for ending the tenancy was for the Landlord's use, and with the stipulation that the Landlord had all necessary permits and approvals required by law to demolish or repair the rental unit in a manner that requires the Tenant to vacate the rental unit. I am satisfied, on the evidence and testimony of both parties, that the Landlord did not have all necessary permits and approvals required by law when the Notice to End Tenancy was issued.

The Notice to End Tenancy is therefore cancelled and the tenancy remains in full force and effect.

The Tenant has been successful in his application and is entitled to recover the cost of the filing fee from the Landlord. Pursuant to Section 72(2)(a) of the Act, the Tenant may deduct the amount of \$50.00 from future rent due to the Landlord.

Conclusion

The Notice to End Tenancy issued July 14, 2009, is cancelled. The Tenancy remains in full force and effect.

Pursuant to Section 72(2)(a) of the Act, the Tenant may deduct the amount of \$50.00 from future rent due to the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 15, 2009.
