



Dispute Resolution Services

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

DECISION AND REASONS

Dispute codes: CNL, MNDC, FF

Introduction

This was an application by the tenant for an order cancelling a two month Notice to End Tenancy for landlord's use and for a monetary order. The hearing was conducted by conference call. The tenant and the named landlord participated in the hearing.

In this application the tenant has requested an order cancelling a Notice to End Tenancy for landlord's use and for a monetary order in the amount of \$4,770.00. The tenant's claim for a monetary order is based on her assertion that she is entitled to damages because the landlord has breached a verbal agreement to provide her with a long term tenancy.

Background and evidence

In January, 2009 the tenant and two other persons agreed to rent the rental unit, a house in Vancouver. The tenancy began on February 1, 2009 and runs from month to month with rent in the amount of \$1,750.00 due in advance on the first day of each month. The tenant paid a security deposit of \$875.00 in January. The landlord did not provide a receipt. The tenant requested a long term lease agreement from the landlord, but no written tenancy agreement was ever created.

The tenant testified that the landlord attended at the rental on August 1, 2009 and gave her a two month Notice to End Tenancy for landlord's use. The Notice was dated July 31, 2009. The Notice required the tenant to vacate by September 30, 2009. The stated ground for the notice was that all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Both the landlord and the tenant submitted copies of a purchase and sale agreement made between the landlord and an intended purchaser or his nominee. The agreement provided that the purchaser was to have vacant possession of the property. An addendum to the agreement provided that completion would occur and possession would be given on September 30, 2009.

At the hearing the landlord and his realtor testified that the intended purchaser had died and it was unclear whether the sale to his nominee would actually complete. The landlord did not produce any written request from the intended purchaser requiring the landlord to give the tenants a Notice to End Tenancy on the basis that the purchaser or a close family member intended to occupy the rental unit.

Analysis and conclusion

I am satisfied on the evidence that the landlord did not have proper grounds to give the Notice to End Tenancy when it was presented to the tenant on August 1, 2009 because he did not have a written request from the intended purchaser asking him to give the Notice on the basis that the purchaser, or a close family member intended in good faith to reside in the rental unit. Since the Notice was given the matter has become even more tenuous and now there is some doubt that the sale will complete. I therefore order that there is a continuing tenancy and the Notice to End Tenancy Dated July 31, 2009 be, and is hereby cancelled. The tenants proffered rent for the month of September but the landlord refused to accept it, apparently on the basis that if the Notice was upheld the tenant would be entitled to withhold rent for September. I direct that the landlord accept the tenant's rent payment for September. I deny the tenant's claim for a monetary order; I do not accept the tenant's contention that she should be entitled to damages because the landlord refused to honour a verbal agreement for a long term lease. If the matter of a long term lease was crucial to the tenant she should have insisted upon a written tenancy agreement stating the term of the rental before commencing the tenancy. Further the claim is speculative because there is a continuing tenancy. The tenant is entitled to recover the \$50.00 filing fee for this application and the said sum may be deducted from a future installment of rent.

Dated October 01, 2009.