



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated September 20, 2009, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on June 1, 2009. On August 20, 2009, the Tenant's application to cancel a Notice to End Tenancy for Cause dated July 5, 2009 was granted by me. That Notice alleged that the Tenant had failed to pay a security deposit within 30 days of the date it was required to be paid under a tenancy agreement. However, I found that there was no written tenancy agreement, that there was insufficient evidence that a verbal request had been made by the Landlord to provide a security deposit at the beginning of the tenancy and that as a result of s. 20 of the Act the Landlord could no longer demand a security deposit as a condition of the tenancy.

The Tenant has applied in this matter to cancel another One Month Notice to End Tenancy for Cause dated September 20, 2009. That Notice also alleges that the Tenant has failed to pay a security deposit within 30 days of the date it was required to be paid under a tenancy agreement.

The Landlord claimed that at the hearing on August 20, 2009 the Dispute Resolution Officer advised her to give the Tenant a written demand for payment of the security deposit and if the Tenant did not pay within 30 days, to issue her a new One Month Notice. Consequently, the Landlord said she served the Tenant with a new Notice on September 20, 2009 when the Tenant failed to pay the security deposit.

Analysis

I find that the issue of the Landlord seeking to end this tenancy for non-payment of a security deposit has already been dealt with in my decision dated August 20, 2009.

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Consequently, I find that there are no grounds for issuing a second One Month Notice dated July 5, 2009 citing the same grounds.

Even if comments were made in error by the Dispute Resolution Officer at the hearing on August 20, 2009, the Decision dated August 20, 2009 should have alerted the Landlord that she was not entitled to collect a security deposit for the following reasons:

“The Parties should also note that section 20 of the Act says that a Landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement. Consequently, I find that the Landlord was not entitled to require the Tenant to pay a security deposit one month after the new tenancy started.”

The Tenant argued that the Landlord's actions in serving the 2 Notices and documents related to the respective dispute resolution hearings constitutes harassment and has interfered with her right to quiet enjoyment. In the B.C. Supreme Court case of *Whiffin v. Glass & Glass (July 26, 1996) Vancouver Registry No. F882525 (BCSC)*, the Court held that attempts by a landlord to end a tenancy, **if he believes he has grounds** (emphasis added), do not constitute a breach of the covenant of quiet enjoyment of the premises.

The Tenant claimed that when the Landlord made a 2nd demand for the security deposit on September 20, 2009, she explained to the Landlord that (as indicated in the Decision) she could not demand one. The Tenant also argued that the Landlord failed to inform herself about her rights and responsibilities under the Act and further argued that if the Landlord did not understand the Decision dated August 20, 2009 she could have applied for a Clarification.

Notwithstanding the Tenant's arguments, I find that the Landlord mistakenly believed that she had grounds to serve the Tenant with another One Month Notice for not paying a security deposit. Consequently, I find that there is insufficient evidence to support the Tenant's application for compensation and it is dismissed without leave to reapply. However, the Landlord is now on notice that she cannot give the Tenant another Notice to End Tenancy during this tenancy for non-payment of a security deposit unless the Parties enter into a written tenancy agreement that provides for the payment of a security deposit.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated September 20, 2009 is granted and the tenancy will continue. The Tenant's



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application for compensation (for harassment) is dismissed without leave to reapply. As the Tenant has been partially successful, she is entitled to recover one-half of her filing fee for this proceeding or \$25.00. I order pursuant to s. 72 of the Act that the Tenant may deduct this amount from her next rent payment when it is due and payable.

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: November 10, 2009.

Dispute Resolution Officer