

Decision

Dispute Codes: MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Were the parties in a fixed term tenancy?

Was the tenant evicted?

Did the tenant give proper notice to end the tenancy?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2008 and ended at the end of July 2009. The landlord holds a \$422.50 security deposit. The tenancy was initially set for a fixed term of one year, expiring on April 30, 2009. The landlord testified that he and the tenant agreed to enter into another fixed term tenancy, beginning on May 1, 2009 and ending on April 30, 2009 and pointed to the receipt of post-dated cheques through the end of October as proof of the fixed term. The tenant testified that she agreed to enter into a fixed term tenancy to October 31, 2009 only. The parties agreed that the rent payable for the new term would be \$870.00 per month.

The tenant testified that she gave the landlord verbal notice on June 26 advising that she would be vacating the unit at the end of August. The tenant further testified that the landlord telephoned her on July 18 and verbally demanded that she leave the rental unit by the end of July. The tenant took the position that she was released from the fixed term by the landlord's verbal eviction. The tenant further testified that she was told by her therapist that she should not live in the rental unit any longer and that she was required by court order to follow the recommendations of her therapist, so she was therefore prevented from continuing the fixed term.

The landlord denied having told the tenant that she must leave the rental unit by the end of July. The landlord testified that he discovered on July 18 that the tenant would be

vacating the unit at the end of July and attempted to re-rent the unit in early August by posting an advertisement on Craigslist and by posting signs on the building, in the community centre, at Douglas College and at the Royal Columbian Hospital. The landlord was able to re-rent the unit for October 1 at a rental rate which was \$5.00 less than what the tenant had been paying. The landlord seeks to recover loss of income for August and September and the difference in rent for the balance of the fixed term.

At the hearing the parties agreed that the tenant was responsible for the \$441.00 cost of repairing the door to the rental unit.

Analysis

Although there is no written agreement showing that the parties began a second fixed term on May 1, the tenant has acknowledged that she understood that there was a fixed term until the end of October. I find that the landlord has failed to prove that there was a fixed term beyond October 31 and I find that the parties had a fixed term tenancy agreement which was set to expire on October 31. The Act provides that tenancies which do not end by mutual agreement can only be ended when a tenant or landlord serves the other with written notice to end the tenancy. I find that neither party gave the other written notice to end the tenancy and accordingly find that the tenant was not legally evicted. I find that the court order requiring the tenant to follow the recommendations of her therapist cannot be binding on the landlord and cannot operate to relieve the tenant of liability loss resulting from breach of her fixed term tenancy. I find that the tenant breached the agreement by ending the tenancy in July. I further find that the landlord acted reasonably to minimize his losses. I award the landlord \$870.00 in lost income for the month of August and a further \$870.00 in lost income for the month of September. As I have found that the fixed term ended on October 31, I find that the landlord is entitled to a further award of \$5.00 which is the difference in the rental rate for that month.

As the parties have agreed that the tenant is responsible for the cost of repairing the door to the unit, I award the landlord \$441.00. I also find that the landlord is entitled to recover the \$50.00 filing fee paid to bring his application.

Conclusion

The landlord is granted a monetary order for \$2,236.00 which represents \$870.00 in lost

income for each of the months of August and September, \$5.00 as the rent differential in October, \$441.00 for the repair of the door and \$50.00 for his filing fee. I order the landlord to retain the \$422.50 security deposit and \$4.76 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord a monetary order for the balance of \$1,808.74. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated December 1, 2009.