

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a monetary order. The landlord did not participate in the conference call hearing. The tenant testified that on or about February 27 she personally served the landlord with the application for dispute resolution and notice of hearing. I was satisfied that the landlord had been served in accordance with the requirements of the Act and the hearing proceeded in his absence.

At the hearing the tenant advised that she had vacated the rental unit on or about March 27. As the tenant no longer wishes to reside in the rental unit, I considered the claim for an order setting aside the notice to end tenancy to have been withdrawn. The hearing proceeded to address only the monetary claim.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant's undisputed testimony is as follows. The rental unit is one of two suites on the lower floor of a home in which the landlord resides on the upper floor. On February 21 the tenant was served with a one month notice to end tenancy for cause which advised that the rental unit had to be vacated in order to comply with a government order. Appended to the notice was a letter addressed to the landlord from the City of Abbotsford advising that only one secondary suite was permitted under the zoning bylaw and that an additional secondary suite had been discovered on the residential property. The letter directed the landlord to obtain a suite removal permit and advised that failure to comply could result in significant fines. Although the tenant disputed the notice, she elected to vacate the rental unit. The tenant had been paying \$650.00 per

month in rent to the landlord in addition to \$50.00 for heat. The tenant seeks a monetary award for \$700.00 to compensate her for the inconvenience and expense of moving, which she had not anticipated.

Analysis

The landlord chose to rent a unit which he knew or should have known was illegal under the city's zoning bylaw. The landlord's choice to disregard the zoning restrictions resulted in the tenant incurring inconvenience and expense to move. The tenant had no reason to believe that the tenancy could be summarily ended by a third party due to the landlord's choices. I find that the tenancy ended through the fault of the landlord rather than through the fault of the tenant and I find that the landlord should compensate the tenant for the losses she suffered. I find that an award equivalent to one month's rent will adequately compensate the tenant and I award her \$650.00. I find that the tenant is entitled to recover the \$50.00 filing fee paid to bring this application and I award her that sum as well.

Conclusion

I grant the tenant a monetary order under section 67 for \$700.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: April 08, 2010
