# DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for cause and for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

As the commencement of the hearing I heard the tenant served the landlord with the Application for Dispute Resolution by registered mail within three days of making the application and the tenant's evidence in the first week of June 2010. The landlord served the tenant with an evidence package and then subsequently served an amended evidence package via registered mail on June 9, 2010. I was satisfied the tenant had an opportunity to review the landlord's second evidence package as she made comments about the amendments.

In discussions about service of the landlord's evidence, the landlord stated she sent the evidence to the tenant using a postal box. Upon enquiry, the landlord stated that her copy of the application provides for a postal box for service. I noted the address on the tenant's application was not a postal box. I subsequently determined the tenant had not served the landlord with a copy of the application given to the Residential Tenancy Branch. Upon review of the application with the landlord, I determined the remainder of the application appeared identical except for the tenant's address. The tenant explained that she provided the Residential Tenancy Branch with her current residence and gave the landlord the postal box of her ex-husband as the tenant did not want the landlord to know her current address. The tenant submitted that she was fearful of the male landlord. The landlord objected to such a characterization of the male landlord and stated that the male landlord is 80 years old with a severe heart condition and has suffered numerous strokes.

I also determined that the tenant has vacated the rental unit and I determined there was no need to consider the tenant's request to cancel a Notice to End Tenancy for cause, if one was ever issued.

As a procedural note, both parties attempted to introduce statements I determined irrelevant to me making findings necessary to reach a decision pertaining to the dispute before me. As a result I had to redirect the parties to provide statements relevant to the issue under dispute and to answer the questions asked of them.

Issues(s) to be Decided

1. Is the tenant entitled to the monetary compensation sought in this application?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced August 1, 2009. The tenant was required to pay rent of $720.00 on the 1st day of every month. In January 2010 the parties met and discussed ending the tenancy and the landlord promised to compensate the tenant one month of rent. The tenant paid rent for February 2010. On February 4, 2010 the tenant was refunded the rent she paid for February 2010. On that date the tenant signed a document prepared by the landlord detailing how the tenancy was ending by mutual agreement and that the tenant was receiving compensation of one month's rent. The tenant vacated the rental unit February 28, 2010 and the security deposit has been refunded to the tenant.

The tenant reduced the amount of compensation sought with this application to the following amounts:

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|---|---|
| Two times monthly rent | $ 1,440.00 |
| Moving costs ($151.06 + 77.51 + 20.00) | 248.57 |
| Total claim | $ 1,668.57 |

The tenant's basis for making this application is that in January 2010 she was given verbal notice to end tenancy by the landlord effective February 28, 2010 and in exchange the landlord would compensate the tenant one month's rent. The tenant submitted that she was told the landlord would be moving into the rental unit; however, the landlord did not and re-rented the unit. The tenant is of the position she is entitled to further compensation of two month's rent since the landlord gave notice to end tenancy for the landlord's own use and did not use the rental unit for that purpose.

The tenant acknowledged signing the document dated February 4, 2010. The tenant implied she had a difficult time reading the document although she acknowledged enquiring about certain words in the document. The tenant claimed she was forced to sign the document under duress as the landlord would not refund the February rent unless the document was signed.

The landlord testified that in January 2010 the parties met and discussed several issues including the problem of having cats in the tenant's unit and in the landlords' unit and the possibility the landlords may move into the rental unit. The landlord submitted that the tenancy relationship was not working out and the tenant herself stated she had been looking for another place to live. The landlord testified she told the tenant to take her time in finding a new place and claims there was not set date to end the tenancy. Rather, the tenant paid rent for February 2010 as usual and then on February 3, 2010 the tenant contacted the landlord to advise the landlord she had found a new place to live and requested the rent paid for February 2010 be refunded to her.

The landlord prepared a document to record the mutual agreement to end tenancy and compensation provided to the tenant. The landlord was of the position the tenant was more than willing to sign the document. The landlord also stated that she gave the

tenant a magnifying glass to read the document and the tenant enquired about the meaning of the words “pro rata” that appear in the document. The landlord denied there was any duress in the tenant signing the document.

Analysis

Section 59 of the Act provides that a party that makes an Application for Dispute Resolution must give a **copy** of the application to the other party within three days of making the application. The Residential Tenancy Branch makes copies of the Application for Dispute Resolution and provides the copies to the applicant to serve upon the respondent. In this case, the landlord was not provided an exact copy of the Application for Dispute Resolution that was submitted and approved by the Residential Tenancy Branch. I find it most likely the tenant altered the application after being provided copies of the application and served the landlord with the altered application. While serving an altered application may be grounds for dismissal, I proceeded to hear from the parties as the landlord had prepared for this dispute and the actions sought by the tenant were the same on both copies of the Application for Dispute Resolution.

I found the tenant’s explanation for providing a different address to the landlord to be very unlikely given the undisputed physical condition of the male landlord. Rather, upon hearing the landlord state that the landlord had incurred damages or loss from the tenancy I find it more likely the tenant altered the Application for Dispute Resolution so as to avoid service of a landlord’s Application for Dispute Resolution. Further, I found that serving the landlord with an altered application to be indicative of the tenant having an intention to deceive and this speaks to the tenant’s credibility.

The Act provides for compensation equivalent to two month’s rent under section 51. Section 51 applies were a tenant receives a 2 Month Notice to End Tenancy for

Landlord's Use of Property. The tenant did not receive such a Notice and is therefore not entitled to compensation under section 51 of the Act.

Although I found the tenant not entitled to compensation under section 51 of the Act I did consider whether the tenant was entitled to compensation for damage or loss due to a violation of the Act, regulations or tenancy agreement by the landlords.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The balance of probabilities means that one version of events is found to be more likely than another version. In this case, I was presented with two different versions of what was said between the parties in January 2010. I found the landlord's version of the conversation more likely than the tenant's version. I found it was unlikely that the tenant would pay rent for February 2010 if she knew her tenancy was ending February 28, 2010 and had been promised compensation equivalent to one month's rent. Rather, I find it more likely that in January 2010 the parties had a discussion about ending the tenancy at some point in the future and that upon the tenant finding a new place to live in early February 2010 an end of tenancy date was set for February 28, 2010. I do not find the discussion that took place in January 2010 constitutes a notice to end tenancy from the landlord and the tenant began looking for a new place to live on her own accord.

The tenant also signed a document indicating the tenancy was ending by mutual agreement. This is further indicative that the parties had reached a mutual agreement to end the tenancy upon the tenant finding a new place to live on her own accord. Since both parties testified that the tenant had enquired about the meaning of certain words in the document signed by the tenant, I accept that the tenant read and understood the document before signing it.

Overall, I found the tenant's testimony lacked veracity and I reject the tenant's position she signed the document under duress. Even if I did accept the tenant's version of what occurred on February 4, 2010 the circumstances do not meet the criteria of finding duress.

The tenant did not sufficiently satisfy me that the landlords violated the Act, regulations or tenancy agreement so as to cause the tenant to incur damages or loss. Even if the landlords had been found to have violated the Act in this case, the tenant failed to prove she incurred damages or loss that exceeded the compensation she has already received from the landlords. Therefore, the tenant is not entitled to further compensation from the landlords.

In light of all of the above reasons, I dismiss the tenant's Application for Dispute Resolution without leave to reapply.

Conclusion

The tenant's application has been dismissed without leave to reapply.

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: June 18, 2010.

Dispute Resolution Officer