

## **DECISION**

**Dispute Codes:** OPT, MNDC

### **Introduction**

This is the Tenant's application for an Order of Possession and a Monetary Order for loss under the tenancy agreement, Residential Tenancy Act (the "Act"), or regulation.

The parties gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Is the Tenant entitled to an Order of Possession for the rental unit?
- Is the Tenant entitled to a Monetary Order for compensation under the Act?

### **Preliminary Matter**

On July 19, 2010, the Tenant amended his Application for Dispute Resolution to increase the amount claimed for compensation, however the Tenant did not serve the Landlords with his amended Application within the time limits allowed. Therefore, I did not consider the Tenant's amended Application and the Hearing proceeded based on the Tenant's original Application filed June 29, 2010.

### **Background and Evidence**

The Tenant testified that no valid Notice to End Tenancy was ever given to him by the Landlords. He stated that the Landlord AG paid him a visit on May 31, 2010 and asked him to move because his son would be the new caretaker of the rental property effective July 31, 2010. The Tenant testified that the Landlord AG told him that he could have another rental unit in the building if another tenant did not want it, and that he would know for sure by July 8, 2010. The Tenant testified that when that unit was not available, the Landlord AG offered him a different room on the third floor for \$450.00 per month. The Tenant testified that the rent for his current room was \$400.00. The Tenant testified that he agreed to move into the room on the third floor on the condition that he was paid compensation in the amount of \$400.00 and a new tenancy agreement was signed with the Landlord. The Tenant testified that the Landlord did not draw up a new tenancy agreement, so the Tenant filed his Application for Dispute Resolution on June 29, 2010 because he did not trust the Landlord to make the 3<sup>rd</sup> floor suite available to him. The Tenant testified that the Landlord wanted to paint the rental unit, so he went to stay with a friend from June 20 to July 2, 2010. The Tenant stated he returned to the rental property on July 2, 2010, expecting to move into the room on the third floor, to discover that the Landlord had rented the third floor room to someone else.

The Tenant seeks an Order of Possession for the rental unit. He stated that there was no one living there and that his possessions were still in the rental unit. The Tenant

stated that he had no intention of moving until the Landlord asked him to move so his son could take possession of the rental unit.

The Tenant provided no testimony or evidence with respect to his claim for a monetary order.

The Landlord AG testified that he had in his possession a formal Notice to End Tenancy when he visited the Tenant on May 31, 2010, but that they had reached a “gentleman’s agreement” that the Tenant would move out at the end of June if the Tenant got compensation in the amount of \$400.00. The Landlord testified that the Tenant paid rent for the month of June and that the Landlord compensated the Tenant by giving him \$400.00 in installments plus an extra \$200.00. The Landlord testified that the Tenant and he signed a mutual end of tenancy agreement, and provided a copy in evidence. The Landlord stated that he was prepared to rent the third floor room to the Tenant, but that he couldn’t find the Tenant, so he rented it out to someone else for \$485.00 per month. The Landlord testified that the Tenant provided him with the Notice of Dispute Resolution on June 29, 2010, and asked if the 3<sup>rd</sup> floor room was rented out, to which he answered “no”. The Landlord stated that the Tenant did not indicate that he wanted to move into the room on the third floor, so he rented it to someone else.

The Landlord stated that the rental unit was being painted and new tile was being installed. He stated that the Tenant’s possessions were safely stored at the rental property.

### **Analysis**

The Tenant did not provide sufficient evidence to support his claim for a monetary award in the amount of \$500.00. This portion of his application is therefore dismissed.

The agreement entered in evidence by the Landlords does not meet the requirements of a mutual end of tenancy agreement. It is vague and non-specific with respect to what the parties agreed to. For example, it contains incomplete sentences, and the meaning of the incomplete sentences is not clear. The document refers to compensation in the amount of \$100.00, and also compensation in the amount of \$400.00. The agreement contains two end of tenancy dates, “at the end of June, 2010” and “by July 1, 2010, neither of which are for a date certain. The agreement concludes with a statement that the Tenant gives 30 days notice for moving out of the rental unit if he doesn’t rent the room on the main floor.

I find that no End of Tenancy Agreement exists between the parties. The rental unit remains vacant for painting and re-tiling. I hereby provide the Tenant with an Order of Possession effective August 1, 2010. For clarity, the monthly rent will remain at \$400.00 per month.

The parties are cautioned to provide each other any future Notice to End Tenancy in writing and in a form that complies with the provisions of the Act.

## **Conclusion**

The Tenant's application for a Monetary Order is dismissed.

I hereby provide the Tenant with an Order of Possession effective August 1, 2010. This Order must be served on the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: July 21, 2010.

---

Dispute Resolution Officer