

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original one year fixed term of tenancy began on or about October 1, 2008. Following the end of the fixed term, tenancy continued on a month-to-month basis. Rent in the amount of \$1,225.00 was payable in advance on the first day of each month.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord, who was the former owner of the unit, issued a 2 month notice to end tenancy for landlord's use of property dated November 27, 2009. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is January 31, 2010. The reason shown on the notice for its issuance is as follows:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the unit.

Subsequently, the tenant vacated the unit on or about January 31, 2010.

Thereafter, the tenant concluded that neither the new purchaser nor a close family member occupied. In the result, the tenant served the application for dispute resolution on the new purchaser, named in these proceedings as the “landlord.”

During the hearing the landlord and her partner testified that they did not inform the previous owner either in writing or orally, of any intention on their part or on the part of a close family member to occupy the unit. The landlord and her partner further testified that at no time did they ever have direct dealings with the former owner and dealt, instead, with her realtor. The landlord and her partner also testified that their intention was to clean, paint and possibly complete some minor renovations in the unit before re-renting it. Additionally, they testified that a friend temporarily stayed in the unit to complete some painting after the tenant vacated, from approximately March to April 2010. The landlord and her partner testified that their principal residence is elsewhere, that the subject unit is currently vacant, and that new renters will take possession effective September 1, 2010. Finally, the landlord and her partner very strongly take the position that the tenant was misinformed by the former owner as to their intentions, and that any liability for compensation should therefore fall to the former owner.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and persevered to achieve a resolution, principally in order to move forward and avoid the prospect of having to participate in another hearing.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

For the information of the parties, section 51 of the Act addresses **Tenant’s compensation: section 49 notice**, and provides in part as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49
[*landlord’s use of property*] is entitled to receive from the landlord on or before

the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

During the hearing the tenant confirmed that, pursuant to section 51(1) of the Act, she paid no rent for the final month of her tenancy which was January 2010.

Further, section 51(2) of the Act provides:

51(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that the landlord will issue cheque payment to the tenant in the full amount of \$460.00;
- that the landlord will mail the above cheque to the tenant at the tenant's current address as shown in the application for dispute resolution;
- that the landlord put the above cheque into the mail by no later than midnight, Tuesday, August 31, 2010;

- that the above particulars comprise full and final settlement of all aspects of the dispute arising from this tenancy for both parties, which are currently before me.

Conclusion

Pursuant to the agreement reached between the parties, as above, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$460.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: August 12, 2010

Dispute Resolution Officer