

## **DECISION**

### **Dispute Codes:**

MNDC; FF

### **Introduction**

This is the Tenant's application for a monetary order for compensation for damage or loss; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

### **Issues to be Decided**

- Is the Landlord a "landlord" as defined by the Act? Did the parties enter into a "tenancy agreement" as defined by the Act?
- Is the Tenant entitled to a monetary order in compensation for damage or loss, and if so, in what amount?

### **Background and Evidence**

The Tenant gave the following testimony:

The Tenant answered the Landlord's on-line ad for a roommate at the rental unit. The Landlord was aware that the Tenant had a dog and agreed that she could move into the rental unit with her dog. The Tenant provided the Landlord with \$1,000.00 for the first month's rent by way of wire transfer on March 31, 2010. The Tenant moved into the rental unit on April 3, 2010, but was not able to move her furniture into the rental unit because it was a long weekend. The Tenant stored her furniture and slept on an air mattress.

Three days after the Tenant moved into the rental unit, the Landlord advised her that the strata corporation bylaws only allowed one dog per rental unit. The Landlord had his own dog. The Landlord told her she would have to move out and he would have to get a new roommate. The Landlord told the property manager not to allow the Tenant to move her belongings into the rental unit, or to allow her to sign into a tenancy agreement. The Tenant told the Landlord that she would find another place for her dog to stay until she found another place, but the Landlord refused.

The Landlord insisted she move out and did not provide her with due Notice to end the tenancy.

The Tenant moved out of the rental unit on April 10, 2010. The Landlord initially told her that he would refund a prorated amount of rent to the Tenant, and later refused to give her anything. The Tenant returned the keys to the rental unit on April 12, 2010. The Tenant paid \$800.00 in rent to another landlord for the period of April 10, 2010 to April 30, 2010

The Tenant seeks to recover the \$1,000.00 she paid the Landlord for April's rent, and \$250.00 for the cost of storing her belongings.

The Landlord gave the following testimony:

There was no written tenancy agreement between the Landlord and the Tenant and the parties were roommates, not a "landlord" and "tenant".

The Tenant's dog was larger than he thought and was scratching the hardwood floors. The Landlord did not feel comfortable with the Tenant finding another home for her dog and did not want to deal with the guilt of her having to get rid of her pet.

The property manager explained that there was only one pet allowed per unit and that the Landlord could be fined if the dog stayed. He thought it best if the Tenant found

another place to live. The Landlord was prepared to help her find suitable alternate accommodation and offered to return \$500.00 of the \$1,000.00 she had paid him because she was living there for almost a month. The Landlord signed papers given him by the property manager not to allow the Tenant to sign the lease.

The Tenant refused to talk to the Landlord and would only communicate in writing.

The Landlord did not give the Tenant formal Notice, but he gave her verbal notice that she had to move out of the rental unit.

### **Analysis**

The Act requires all tenancy agreements to be in writing. However, the Act defines a “tenancy agreement”, as follows:

**"tenancy agreement"** means an agreement, whether **written or oral, express or implied**, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit

(emphasis added)

The Act defines “landlord” as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or **another person who, on behalf of the landlord,**

**(i) permits occupation of the rental unit under a tenancy agreement, or**

**(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this

(emphasis added)

In this case, the Tenant paid rent for the month of April directly to the Landlord and I find the parties entered into an oral month-to-month tenancy agreement. I find that, by accepting rent directly from the Tenant, the Landlord is a “landlord” as defined by the Act.

Section 44 of the Act describes ways in which a month-to-month tenancy may end. Either party can end a month-to-month tenancy by providing the other party with written notice that conforms with the requirements of Sections 44 and 52 of the Act. Section 52 of the Act states:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In this case, the Landlord did not provide the Tenant with written notice in the approved form that stated the grounds for ending the tenancy. Therefore, I find that the Landlord ended the tenancy illegally and the Tenant is entitled to compensation.

The Tenant seeks a monetary order in the amount of \$1,000.00 for wrongful termination of the tenancy and \$250.00 for storage fees. The Tenant did not provide sufficient evidence with respect to the cost she incurred in storing her belongings and therefore this portion of her application is dismissed.

I find that the Tenant has established her claim for compensation for wrongful termination of the tenancy and allow the Tenant's claim in the amount of \$1,000.00.

The Tenant has been partially successful in her application and is entitled to recover the cost of the filing fee from the Landlord.

### **Conclusion**

I hereby grant the Tenant a Monetary Order in the amount of \$1,050.00 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) 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: August 30, 2010.

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Dispute Resolution Officer