



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This was the hearing of an application by the tenant to cancel a one month Notice to End Tenancy for cause. The tenant applied for other relief including a monetary order and an order that the landlord comply with the Act, Regulation or tenancy agreement. The hearing was held at the Residential Tenancy office in Burnaby. The tenant attended with her representative. The landlord and the building manager also attended

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Is the landlord entitled to an order for possession?

Is the tenant entitled to a monetary award and if so in what amount?

Should the landlord be directed to comply with certain provisions of the Act, Regulation or Tenancy Agreement?

Background and Evidence

The rental unit is an apartment in an apartment building. There are approximately 20 units. The tenant's unit is directly beneath the unit occupied by the building manager. The landlord served the tenant with a one month Notice to End Tenancy. The Notice was defective in several respects. The tenant applied to dispute the Notice on August 19, 2010. The landlord gave the tenant a second form of Notice seeking to end the tenancy for cause as of September 30, 2010. The Notice was slipped under the tenant's door but at the hearing she acknowledged receiving it on August 30, 2010. I

heard evidence from the landlord and the tenant about the alleged grounds for the Notice to End Tenancy. During the course of hearing evidence I learned that on September 22, 2010 the tenant gave the landlord a written notice to end her tenancy effective October 31, 2010.

The tenant applied for a monetary order in the amount of \$262.50, being the amount paid for the services of an exterminator that the tenant hired to rid her apartment of fruit flies. The tenant testified that the garbage bin for the apartment building is located below her unit and the flies are a problem in the springtime due to the proximity of the bin. The tenant paid an exterminator to come to her apartment to treat the apartment and eradicate the fruit flies. The tenant said that the flies were so numerous that she could not keep food in the apartment and adhesive insect strips became black with fruit flies within a short time. The tenant did not contact the landlord either in writing or by telephone before she hired the exterminator on or about May 22, 2010. She said that the building manager told her not to contact the landlord. The landlord testified that the tenant asked him to pay the bill, but he refused because he had not been consulted; he considered the bill excessive; he said he had a pest control company on call for his restaurant business and had he been contacted by the tenant could have treated the problem much more inexpensively.

Analysis and Conclusion

The landlord is content to have the tenancy end on October 31, 2010. Because the tenancy will end pursuant to the Notice given by the tenant, I make no finding with respect to the merits of the tenant's application to cancel the one month Notice to End Tenancy which is the subject of the tenant's application. The Notice to End Tenancy is cancelled, but the landlord is entitled to an order for possession effective October 31, 2010 after service on the tenant. This order may be registered in the Supreme Court and Enforced as an order of that court.

Because the tenancy will end this month, there is no basis for the tenant's application for an order that the landlord comply with the Act, Regulation or tenancy agreement and this aspect of the tenant's application is dismissed.

The *Residential Tenancy Act* provides by section 33 a definition of emergency repairs. Section 33 (3) further provides that a tenant may make emergency repairs only when the tenant has attempted a least twice to contact the person identified by the landlord as the person to contact for emergency repairs and following those attempts has given the landlord reasonable time to make the repairs.

I find that the tenant is not entitled to be reimbursed for the exterminator's bill. I am not satisfied that the eradication of fruit flies is necessarily the landlord's responsibility, but even assuming that to be the case, the tenant made no effort to tell the landlord of the problem and she did not give him an opportunity to remedy it. He testified that his on call pest company could have treated the problem much more inexpensively had he been advised of the problem. The tenant's application for a monetary order for reimbursement of the exterminator's bill is dismissed without leave to reapply.

Because I have made no determination with respect to the merits of the application to cancel the Notice and because the tenant was unsuccessful in her monetary claim, I decline to award a filing fee with respect to this application.