Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNDC, OLC, FF

Introduction

This was the hearing of applications by the tenant and the landlord. The applications were heard together. The tenant applied for a monetary order, including compensation from the landlord equivalent to double the monthly rent payable under the tenancy agreement pursuant to section 51(2) of the *Residential Tenancy Act* (Act). The landlord applied for a monetary order for unpaid rent and for compensation for damage or loss, including damage to the rental property. The hearing was conducted by conference call; the tenant participated as did the landlord and his lawyer.

Background and evidence

The rental property is a house in Richmond. The tenancy began on or about June 21, 2009. Monthly rent was $1,800.00 payable on the first of each month. The tenant paid a security deposit of $900.00 on June 10, 2009. The landlord produced two written forms of application for tenancy. One of those forms dated June 10, 2009 is entitled: "APPLICATION FOR RENTAL" and it includes within it a document entitled: "Agreement of above rental and rules".

The document contains a handwritten passage initialed by the parties that provides:

> After 1st year, option for 2 year lease for tenant if lease is not obtainable (misfortune) L/L will reimburse 200.00 on vacating premises

The second written document with the heading “Application for Tenancy” was a form intended to be filled out by the tenant to allow the landlord to investigate the tenant’s history, including credit past tenancies, employment and income. The form contained a handwritten notation at the bottom of the second page that appeared to consist of the landlord’s signature and the words: “I YR TERM” and “No Pets”.

On May 1, 2010 the landlord told the tenant that his daughter would be moving to Vancouver and would occupy the rental unit. The landlord requested that the tenant sign a form of mutual agreement to end tenancy. The tenant testified that the landlord and his wife attempted for some 20 minutes to convince her to sign the form. She refused to sign it because, as she told the landlord, she did not want to move out of the rental unit. She told the landlord that the mutual agreement was the wrong form and if the landlord wanted to end her tenancy he should give her a two month Notice to End Tenancy for landlord’s use. The tenant then left the landlord’s house, went to a friend and had her print the Notice to End Tenancy form. She returned to the landlord’s house with the proper form, filled it out and gave it to the landlord who signed the form. The Notice to End Tenancy required the tenant to move out of the rental unit on July 31, 2010.

The tenant moved out on July 31st. She met the landlord at the rental property on August 1, 2010. The landlord inspected the rental property and wrote the tenant a cheque in the amount of $905.00 presumably representing her original security deposit and interest in the amount of $5.00.

On August 7, 2010 the tenant learned that the landlord’s daughter did not occupy the rental unit. Contrary to the landlord’s statement to her and the Notice to End Tenancy that he signed, the property was advertised for rent on July 21, 2010, before the tenant moved out of the rental unit and it was re-rented promptly thereafter. The tenant submitted a copy of the landlord’s advertisement dated July 21, 2010 whereby the rental property was advertised for rent at a monthly rent of $2,250.00

The landlord testified at the hearing that in April, 2010 his daughter and son in law told him that they intended to move to Vancouver and wanted to live in the rental unit. He said that he then told the tenant and asked her to sign the mutual agreement to end tenancy. The tenant told him he was using the wrong form and had him sign a two month Notice to End Tenancy. The landlord testified that on July 15th his daughter told him that she had changed her plans and was not going to move to Vancouver to live in the renal unit after all.. the landlord said that he did not have an opportunity to tell the tenant about the change in plans before she moved out.

The landlord submitted that the 2 month Notice to End Tenancy was given by mistake because the tenancy agreement was for a one year term and it required the tenant to move out at the end of June, 2010 unless the lease was renewed. The landlord has claimed payment of rent for the month of July, 2010 and amounts that he claimed are due for carpet cleaning, pest control and landscaping.

Analysis and Conclusion

The landlord submitted, as part of his evidence an affidavit from his daughter sworn before a Notary on September 22, 2010. She deposed in the affidavit that:

> On or about April, 2010 we informed my father that we wanted to relocate to live in Vancouver to start a family and be closer to my family. We asked him about rental options in Vancouver. He kindly offered that we could live in his rental property in Richmond.

In a subsequent paragraph of the affidavit she said that:

> In August my husband and I flew to Vancouver and decided at that time that we were unsure about moving and decided that we would rather spend time travelling the world extensively before settling down to have and raise a family.

> We subsequently informed my father that we would be travelling the world for about one year and we would not be moving to Vancouver at this time.

The landlord's testimony contradicted the sworn statement from his daughter; he testified that on July 15, 2010 his daughter told him that she did not intend to move to Vancouver and occupy the rental unit. I do not find the landlord's explanation of events to be credible because his testimony contradicts the sworn testimony that he introduced as part of his evidence.

Section 13 of the *Residential Tenancy Act* sets out the requirements for tenancy agreements. if the tenancy is a fixed term tenancy the Act requires that the agreement specify the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term or whether the tenant must vacate the rental unit on that date. The documents that the landlord produced that he claimed constituted a tenancy agreement did not specify the date that the tenancy was to end and did not state that the tenant must move out on a particular date. I find that if the agreement could be construed as a fixed term tenancy then, at the end of the term if not replaced by fixed term lease it would continue on a month to month basis. I do not accept the landlord's argument that the agreement required the tenant to move out on June 30, 2010. Nowhere was that date specified as the end of tenancy date when the tenant must move out. Pursuant to the provisions of the *Residential Tenancy Act* if that was the landlord's intention it would have to be explicitly and unequivocally stated in the agreement.

The tenant was not obliged to sign the mutual agreement to end tenancy. I find that she was correct in her advice to the landlord that the proper means to end the tenancy was by the issuance of a two month Notice to End Tenancy for landlord's use.
Section 51(1) of the Act requires that a landlord who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

(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.

The applicant seeks payment of compensation in the amount of double the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the landlord did not use the rental property for the stated purpose; instead he used it for an incompatible purpose and his explanation for the events is not credible, particularly when the evidence shows that the landlord advertised the property for rent on July 21, 2010 and his daughter deposed that she did not tell her father that she would not move into the rental unit until sometime in August, 2010.

Upon the evidence before me it is my finding that the applicant is entitled to the compensation provided by section 51(2). The Act provides that compensation is payable, regardless of intention if the rental unit is not used for the stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the Notice. I am cognizant of the fact that the 6 month period has not passed, but the property has been re-rented, which is not the purposes for which the notice was given and the landlord acknowledged that the property will not be used for the stated purpose. I find that the landlord must pay to the tenants an amount that is the equivalent of double the monthly rent payable under the tenancy agreement, namely: the sum of $3,600.00. The tenant claimed amounts for repairs and improvements to the rental property including amounts for landscaping bricks left at the rental property. I deny these claims. The work and improvements made by the tenant were not done pursuant

to an agreement with the landlord whereby he agreed to compensate her for the work or materials. These claims are denied. The tenant is entitled to recover the $50.00 filing fee paid for her application for a total claim of $3,650.00 and I grant the tenant an order under section 67 in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord claimed payment of rent for July. I deny this claim. The tenant was entitled to withhold the last months' rent as compensation pursuant to section 51 (1.1).

With respect to the landlord's claims for compensation for carpet cleaning, landscaping and pest control services, the landlord inspected the rental property with the tenant; he approved the condition of the rental unit and returned the tenant's deposit in full. If there were deficiencies in the condition of the rental unit it was up to the landlord to make them known to the tenant at the time of the inspection. It is prejudicial to the tenant to resurrect these claims after approving the condition of the rental property, without producing a condition inspection report and then advancing them by way of a retaliatory claim in answer to the tenant's claim. The tenant produced photographic evidence that I find shows that the rental property was left in satisfactory condition. The landlord submitted invoices, but no other evidence. I note that the bill for yard work was dated August 31, 2010 and appeared to be for yard work including cutting overgrown bushes. I dismiss the landlord's claim in its entirety without leave to reapply.