

## **Decision**

**Dispute Codes:** MNDC

### **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. Both parties participated in the hearing and gave affirmed testimony.

At the hearing the tenant confirmed that she has now vacated the unit. Accordingly, the aspect of her original application which concerns seeking more time to make an application to cancel a notice to end tenancy was withdrawn.

### **Issue to be decided**

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

### **Background and Evidence**

Pursuant to written tenancy agreements, there were 2 separate fixed terms of tenancy: October 1, 2009 to March 31, 2010, and April 1 to September 30, 2010. The 2 tenants named in these agreements were "TB" and "BS." At some point tenant "BS" vacated the unit and "TB" remained. Monthly rent was \$1,149.00, and a security deposit of \$574.50 was collected at the outset of tenancy.

The tenant (applicant) was not named as a tenant on either of the above 2 tenancy agreements, and she moved into the unit on August 1, 2010. The landlord testified that the tenant was considered to be an "occupant" and stated that at no time did the landlord enter into a tenancy agreement with her. However, the landlord acknowledges having completed a "shelter information" form for the purposes of enabling the tenant to receive funds, a portion of which could be used to pay a share of monthly rent and other living expenses.

Arising from rent which remained unpaid when due on September 1, 2010, the landlord issued a 10 day notice to end tenancy for unpaid rent dated September 2, 2010. A copy of the notice was submitted into evidence. Tenant "TB" was the only tenant named on the notice. Subsequently, tenant "TB" vacated the unit and the landlord testified that a portion of rent continues to remain unpaid. For her part, the tenant (applicant) had effectively vacated the unit and removed all of her possessions by September 24, 2010. The landlord testified that no claim for unpaid rent will be made against the tenant (applicant), in part, because she paid a share of the monthly rent and, further, because she is considered to have been an occupant as opposed to a tenant.

In her application the tenant seeks compensation in the total amount of \$5,000.00 as follows:

\$3,000.00: pain and suffering arising from lifting associated with the back and forth transfer of possessions into / out of the unit;

\$1,000.00: stress from the "whole ordeal" related to moving out of the unit;

\$1,000.00: lost belongings.

Included in evidence is a chronology submitted by the landlord. In summary, aspects of the chronology are as follows:

September 16, 2010: landlord informs tenant that as she is not a "legal tenant," she is not authorized to continue to reside in the unit; landlord instructs tenant to remove her belongings by no later than 3:00 p.m.

September 17, 2010: landlord contacts police who inform tenant that she must vacate the unit. Landlord then changes the unit locks and informs tenant that she can return on September 20 in order to gather her belongings.

September 22, 2010: the date when tenant actually attends the unit in order to remove a limited portion of her belongings.

September 23, 2010: the date when tenant attends the unit in order to gather belongings still remaining in the unit.

## **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/](http://www.rto.gov.bc.ca/)

Residential Tenancy Policy Guideline # 13 speaks to “Rights and Responsibilities of Co-tenants,” and provides in part as follows:

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

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The [legislation requires] that tenancy agreements be in writing. Any changes regarding who is a tenant should be recorded in writing.

## **Occupants**

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant was not a “tenant” within the meaning of the term as set out in the legislation and the guidelines. Rather, I find that she was an “occupant.”

Accordingly, as the tenant was not a party to a tenancy agreement with the landlord, I find she has “no rights or obligations under the tenancy agreement.” Following from this, while the landlord has not sought to establish entitlement to a claim against the tenant as a “co-tenant” for compensation including unpaid rent, I find that the tenant has not established entitlement under the Act to any of the compensation sought.

Finally, I note that with respect to possessions the tenant claims went missing “when my place was entered when I was not there and several boxes of my stuff was stolen,” there is no evidence of witness testimony to support that such entry took place, nor is there any evidence of an inventory of possessions or assignment of a specific monetary value for each item.

### **Conclusion**

Following from all of the above, the tenant’s application is hereby dismissed.

DATE: December 15, 2010

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Dispute Resolution Officer