

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the tenant seeking the balance of compensation the landlord promised to pay her for agreeing to leave the rental unit early to facilitate a sale of the property. The tenant had requested recovery of her filing fee but withdrew that claim during the hearing.

Issues to be Decided

This matter requires a decision on whether the tenant is entitled a monetary order for the outstanding of compensation the parties agreed to.

Background, Evidence and Analysis

This tenancy began on September 1, 2009. Rent was \$750 per month and the landlord held a security deposit of \$375. This matter is complicated by the fact that the parties were friends and for that reason they operated without the formality of a written tenancy agreement or written notice to end the tenancy.

During the hearing, the tenant gave evidence that the landlord advised her by a telephone on May 7, 2010 that she would need to vacate in 20 days as he house had been sold.

The landlord had already agreed to reduce her rent for May to \$550 in compensation for disturbance to the tenant of potential buyers going through the rental unit.

The parties came to agreement that the tenant would move out on the date requested on the understanding that the landlord would return the \$550 May rent, plus one full month's rent of \$750 plus the tenant's security deposit of \$375, an amount totalling \$1,675.

In addition, the landlord provided some assistance to the tenant in her move.

When the tenant moved, the landlord gave her a cheque for \$1,100 and stated that he would be the remainder the following day and later told the tenant he would send the balance on May 31, 2010.

The landlord concurred that the parties had negotiated the agreement, but that on reflection, he believed that the \$1,100 was more than adequate compensation and declined to pay the remainder.

Analysis

Section 49 of the *Act* states that a Notice to End Tenancy for landlord use must be served on the prescribed form and give an end of tenancy of at least two months following the next rent due payment.

In other words, notice given May 7, 2010, if served in compliance with the *Act* could not have been effective until July 31, 2010.

As sometimes happens, the landlord in this case need vacant possession much sooner in order to close a sale and promised the tenant a specific incentive in exchange for her waiving her rights under section 49 of the *Act*.

As the tenant appears to have honoured the agreement by moving out in time to facilitate the closing of the sale, I find that the landlord is similarly bound.

Therefore, I find that the landlord owes to the tenant the difference between the \$1,675 two which they agreed and the \$1,100 he actually paid.

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$575.00** for service on the landlord.

December 9, 2010