



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, MNDC, FF
OPR, MNR, MNSD, FF

Introduction

This matter dealt with an Application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 5, 2011, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

At the beginning of the hearing, the Tenant said that her compensation claim was with respect to deficiencies in the rental property at the beginning of the tenancy and with respect to a loss of employment income due to a personal injury she sustained on the rental property as a result of those deficiencies. RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the Tenant's application for compensation is unrelated to her application to cancel a Notice to End Tenancy and as a result, it is dismissed with leave to reapply.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Tenant entitled to compensation and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on October 23, 2010 and expires on October 23, 2011. Rent is \$1,900.00 per month plus \$100.00 for the use of the garage on the rental property. The Tenant paid a security deposit of \$950.00 at the beginning of the tenancy.

On March 20, 2011, the Landlord sent the Tenant an e-mail advising her that she would not accept the Tenant's offer to purchase the rental property and proposed that they end the tenancy effective June 1, 2011 (or June 15, 2011 if more convenient) so that the Landlord could try to sell the property on the Multiple Listing Service. Later that day, the Tenant responded by e-mail to the Landlord and advised her that it was her position that the tenancy could not end earlier than the last day of the fixed term. The Tenant claimed that after discussing the matter further with the Landlord on March 25, 2011 they agreed that the tenancy could end earlier provided that the Tenant gave the Landlord 2 months' written notice. The Tenant provided a copy of an e-mail she said she sent to the Landlord that day to the same effect.

The Landlord said on March 25, 2011 the Tenant insisted that she be able to stay until the end of the fixed term. The Landlord said the Tenant also told her that if she found another residence prior to the end of the fixed term, the Landlord could give the Tenant a Notice ending the tenancy prior to the end of the fixed term. However the Landlord said she advised the Tenant that she would not give the Tenant a Notice ending the tenancy until such time as she received an offer to purchase the property and that if the Tenant wanted to end the tenancy earlier because she found another residence then she should provide the Landlord with written notice. The Landlord said she sent the Tenant an e-mail on April 6, 2011 advising her that the property had been listed and that the realtor was aware that the tenancy would not end until the end of the fixed term.

On May 19, 2011, the Tenant sent the Landlord an e-mail which stated in part,

"I formally accept [your] notice and agree to break our fixed term tenancy agreement. I have officially secured new living arrangements and [the rental unit] will be vacant for your use on July 19, 2011. Rent of \$2,000.00 will be adjusted to reflect the occupancy of 18/31 days or \$1161.29. As per the residential tenancy act and as is reasonable and customary in this situation, I am entitled to the equivalent of 1 month's rent and will not pay rent for the month of June 2011." I understand that the place will not be re-tenanted under your ownership.

The Landlord replied by e-mail to the Tenant on May 19, 2011 advising the Tenant that she had not given the Tenant "notice" as she had relied on the Tenant's earlier advice that she was not willing to end the fixed term early and therefore the Landlord had stipulated with her realtor that should the property sell it could close no earlier than that date. The Landlord said she would only end the tenancy early if the property sold prior to the end of the fixed term. The Landlord also said that she expected rent payments to be paid each month in full and that if the property did not sell after the Tenant moved out, she intended to re-rent it.

The Landlord said the Tenant did not pay rent for June 2011 when it was due and as a result, on June 5, 2011, she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 5, 2011 on the rental unit door. The Parties agree that the Tenant did not pay rent for June and July 2011.

Analysis

The Tenant argued that the Landlord's e-mail of March 20, 2011 constituted a 2 Month Notice to End Tenancy for Landlord's Use of Property that would be deemed to have been given to her if and when she gave the Landlord written notice to end the tenancy prior to the end of the fixed term. The Tenant said she advised the Landlord in writing on May 19, 2011 that she was ending the tenancy on July 19, 2011 and therefore she argued she was entitled under the Act to one month's free rent as compensation. Consequently, the Tenant said she decided to withhold rent for the month of June, 2011. The Landlord denied that she gave the Tenant a notice ending the tenancy and denied that there was an agreement with the Tenant that she could end the tenancy early or withhold rent as compensation.

Section 49(2) of the Act says that a Landlord may end a tenancy by giving a tenant a notice to end the tenancy which cannot take effect for 2 clear calendar months however a Landlord may not end a fixed term tenancy earlier than the last day of the fixed term.

Section 49(7) of the Act says that a 2 Month Notice to End Tenancy must comply with s. 52 of the Act. Section 52 of the Act says that "in order to be effective a Notice to End Tenancy must be in writing, must be signed and dated, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form."

I find that the Landlord's e-mail of March 20, 2011 did not constitute a 2 Month Notice to End Tenancy for Landlord's Use of Property because it did not comply with s. 52 of the Act in many regards, most notably it was not on an approved form. I also find that the Tenant knew the Landlord's e-mail of March 20, 2011 was not an effective notice to end the tenancy because she admitted as much in her e-mail of the same date in which she rejected the Landlord's proposal and insisted that the tenancy could end no earlier than the last day of the fixed term.

I also find that there was no agreement between the Parties that the Tenant could accept the Landlord's "Notice" at a later date by giving her 2 month's written notice. The Landlord denied this and relied on her e-mails of April 6, 2011 and May 19, 2011 in support of her claim that she had to set the terms of her listing to coincide with the last day of the fixed term because the Tenant was unwilling to end the tenancy early. Furthermore, the Tenant's e-mail of March 25, 2011 is silent on the issue of compensation and there is no other evidence that the Landlord agreed to that term. Consequently, I also find that there was no agreement that the Tenant could end the tenancy early and receive one month's rent as compensation.

Even if there was an agreement or Notice as the Tenant alleged (and I find there was not), a 2 Month Notice if given by the Landlord on May 19, 2011 would not take effect until July 31, 2011. Therefore the Tenant would have been entitled under s. 51(1.1) of the Act to withhold **her last month's rent** or rent for July 2011 as compensation.

However, the Tenant was under the mistaken belief that she could withhold rent for the month of her choosing and withheld rent for June 2011 when she had no right under the Act to do so. Consequently, even if the Tenant was entitled to free rent for July 2011 as compensation for the Landlord ending the tenancy (and I find that she was not), she lost any entitlement to that compensation because the tenancy was deemed to have ended on June 15, 2011 (the effective date of the 10 Day Notice) by her failure to pay the overdue rent for June 2011 within the 5 days granted under s. 46 of the Act.

Consequently, I find that rent was due for June 2011 but was not paid by the Tenant and therefore her application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 5, 2011 is dismissed without leave to reapply. As a result, I find that the Landlord is entitled pursuant to s. 55(1) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover unpaid rent for June 2011 of \$2,000.00, to unpaid rent for July 1 – 4, 2011 in the pro-rated amount of \$258.06 and to a loss of rental income for the period July 5 – 15, 2011 in the pro-rated amount of \$709.68. If the Landlord is unable to re-rent the rental unit for the balance of the fixed term, she may re-apply for a loss of rental income.

As the Landlord has been successful in this matter, I find that she is entitled pursuant to s. 72(1) of the Act to recover the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$950.00 in partial payment of the rent arrears. The Landlord will receive a monetary Order for the balance owing of \$2,067.74.

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply. The Tenant's application for compensation for damage or loss under the Act or tenancy agreement is dismissed with leave to reapply.

An Order of Possession to take effect 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$2,067.74** have been issued to the Landlord. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia. 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: July 04, 2011.

Residential Tenancy Branch