

DECISION

Dispute Codes: MNDC, MNSD and FF

Introduction

This application was brought by the landlord on July 25, 2011 seeking an Order of Possession and a Monetary Order for losses arising from the tenant's failure to vacate the rental unit on July 31, 2011 after having given verbal notice to do so. The landlord amended the application on August 18, 2011 to remove the request for an Order of Possession and amended the monetary claim.

Issues to be Decided

This application now requires a decision on whether the landlord is entitled to compensation for the losses arising from the tenant having not moved as agreed.

Background and Evidence

According to the landlord who did not submit a copy of the agreement, this tenancy began on September 1, 2010 under a fixed term rental agreement set to end on August 31, 2011, then defaulting to a month to month tenancy. Rent is \$1,650 per month and the landlord holds a security deposit of \$850.

During the hearing, the landlord gave evidence that, in June 2011, the tenant gave verbal notice of her wish to vacate the rental unit on July 31, 2011 and to move to another suite in the building. The landlord agreed and stated that the tenant had cooperated with his showing the suite to a number of prospective new tenants in July and he had succeeded in finding new tenants for August 1, 2011. Toward the end of July 2011, the landlord and respondent tenant were at variance over the terms of the agreement for the suite into which she had intended to move. In the

result, the tenant refused to sign the agreement for the new rental agreement and to move out of the subject rental unit on July 31, 2011.

Consequently, the landlord had to compensate the new tenants who he had temporarily placed in another empty suite which was in need of renovation. He seeks reimbursement for that and for anticipated moving costs of relocating the new tenants to the suite they agreed to rent starting August 1, 2011.

The tenant's agent, also an occupant of the subject rental unit, concurred with the general outline of these facts but attributes the change of plans to the landlord having failed to deliver the new agreement until July 21, 2011 and that it did not include some features the tenant understood to be part of the verbal agreement. He characterized the expressed wishes of the tenant to relocate as tentative and conditional on the proposed agreement.

Analysis

Section 7 of the *Act* provides that if one party to a rental agreement suffers a loss due to the non-compliance of the other with the rental agreement or legislation, then the non-compliant party must compensate the other for that loss.

Section 45 of the *Act* sets out the provisions under which a tenant may give notice to end tenancy. This section requires that such notice must comply with section 52 of the *Act* which, among other conditions, requires that such notice bear the tenant's signature and date. As a matter of note, in the case of a fixed term agreement, notice may not have an effective date that is earlier than the end date set by the rental agreement.

Section 44(1)(c) provides that the parties may end a tenancy by mutual agreement, but again, such agreement must be in writing.

In the absence of written notice from the tenant and/or a written mutual agreement to end the tenancy, I must find that there has been no notice. The tenancy remains in effect under the terms of the rental agreement and the landlord cannot claim compensation for losses arising from the verbal notice.

Conclusion

This application is dismissed without leave to reapply on the grounds that there was no effective notice to end the tenancy on which the claimed monetary losses were based.

August 25, 2011