



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord. The landlord did call into the hearing 10 minutes after the start of the hearing but all matters discussed prior to his joining the call were reviewed again to provide for his responses.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to a monetary order for an overpayment of rent due to a rent increase and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 42, 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in March 2009 as a month to month tenancy. The landlord asserts the rent was \$750.00 including hydro. The tenant asserts the rent was \$700.00 plus \$100.00 for her horse and \$50.00 for hydro. The tenant testified that her horse no longer stayed on the property and so the additional \$100.00 was stopped.

In August 2010 the landlord, who had been living in the other house on the residential property moved off the property and new tenants moved into the landlord's former house. The tenant asserts at that time the landlord informed that the rent would be \$750.00 and that she had to pay the new tenants for hydro usage, in addition.

The landlord asserts that when they left the property they kept the rent at \$750.00 and required the tenant to pay the new tenant's for hydro usage in recognition that the tenant would be bringing her horse back to the property. The tenant disputes this claim. Both parties confirm there was no written tenancy agreement, or any subsequent agreements in writing.

The tenant seeks compensation in the amount of \$800.00 for an overpayment of rent due to inadequate notice of a rent increase.

In late October 2011, the tenant and the landlord's parents and the landlords had an altercation regarding the landlords' wish to have their parents park a boat on the residential property.

On November 27, 2011 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of March 1, 2012 citing the landlord had all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord testified that they issued this notice because after the events surrounding the boat, they did not want to upset and escalate the tenant's behaviour. He stated they may in the future complete some repairs to the property but they just want the tenant out of the rental unit.

Analysis

Section 49 of the Act allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith to do any of the following:

- Demolish the rental unit;
- Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- Convert the residential property to strata lots under the *Strata Property Act*;
- Convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property; or
- Convert the rental unit to a non-residential use.

From the landlord's testimony, I find the landlord did not intend in good faith to do any of the renovations; repairs or conversions described as allowed under Section 49. As such, I find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on November 27, 2011 to be null and void.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As both parties disagree on the specific terms of the tenancy relating to the amount of rent to be paid and what was included in that amount, such as hydro utilities and horse

boarding fees the burden of proof rests with the party making the claim for damage or loss, in this case the tenant.

As the tenant has provided no corroborating evidence or testimony confirming the terms of the original tenancy agreement or the terms of the current tenancy agreement, I find the tenant has failed to establish that she has suffered any loss requiring the landlord to provide her with compensation in the amount of \$800.00. I dismiss this portion of the tenants Application.

Conclusion

Based on the above, I find the tenancy remains in full force and effect. As the tenant was only partially successful in her Application, I find that she is entitled to recover \$25.00 of the \$50.00 filing for her Application. I order, in accordance with Section 72(2)(a), that the tenant may deduct this amount from a future rental payment in satisfaction of this debt.

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: December 19, 2011.

Residential Tenancy Branch