



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for a monetary order and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing. The tenant moved out of the rental unit on December 31, 2012 and there is no longer any basis for her application to cancel the Notice to End Tenancy. The tenant's application is therefore dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Penticton. The tenancy began on September 1, 2012. Monthly rent was \$1,050.00, payable on the first of each month. The tenant paid a \$500.00 security deposit on September 1, 2012. On December 1, 2012 the landlord drafted and had the tenant sign a new tenancy agreement containing an addendum clause that provided as follows:

Occupants of the upper unit include only the adult listed on the rental agreement and two children. Occupancy above the stated amount will cost an additional \$200.00 per month per additional occupant.

The landlord alleged that the tenant's former husband was an occupant of the rental unit. The tenant paid December rent in the amount of \$1,050.00. The landlord demanded that the tenant pay an additional \$200.00 based on his assertion that the tenant's former husband was an occupant. He served the tenant with a 10 day Notice to End Tenancy dated December 12, 2012. The notice (incorrectly) alleged that the tenant failed to pay rent in the amount of \$1,250.00 when it became due on December 1, 2012 and required the tenant to move out on December 17, 2012. The tenant applied to dispute the Notice to End Tenancy. She provided proof that rent in the amount of \$1,050.00 was paid on December 1, 2012. She disputed the landlord's assertion that her former husband was an occupant, although he had been an occupant for the preceding three months and was regularly at the rental unit. Despite having

disputed the Notice to End Tenancy the tenant decided to move out on December 31, 2012. She did not give any written notice. She said that she decided to move out because the landlord's behaviour, including installing a surveillance camera to monitor the traffic to and from her rental unit was "creepy". The tenant felt that her decision to move out was justified by the landlord's behaviour and that she should not be responsible for January's rent.

The landlord testified that he has been unsuccessful in re-renting the unit for January. He said that he learned on December 30th that the tenant was moving out the following day. In his application for dispute resolution the landlord claimed \$1,250.00 for January rent.

Analysis and conclusion

The tenant disputed the Notice to End Tenancy for what may have been valid grounds, but after doing so she elected to move out of the rental unit without giving written Notice before her application was heard. If the tenant considered that the landlord's conduct constitutes a material breach of the tenancy agreement, she was obliged to give the landlord written notice of what she said was the breach and give him a reasonable time to correct it before she moved out. The landlord's expectation was that the tenancy would continue at least until the tenant's application was heard. I find that the landlord is entitled to recover rent for the month of January, but not in the amount claimed. The monthly rent under the tenancy agreement was \$1,050.00. The suite was vacant during the month so there is no basis for a charge for an extra occupant. I award the landlord the sum of \$1,050.00. The landlord is entitled to recover the \$50.00 filing fee for a total award of \$1,100.00. I order that the landlord retain the \$500.00 security deposit in partial satisfaction of the award and I grant the landlord an order under section 67 for the balance of \$600.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: January 17, 2013

Residential Tenancy Branch

