



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Langley Rugby Club
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant made an amendment e to this application on May 07, 2013. I declined to hear or determine the amended portion of the tenants claim concerning additional compensation, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this procedure given that the tenants evidence was revived late in this matter and landlord would not have had opportunity to form a rebuttal or provide evidence concerning that matter. The amendment to the tenants claim has therefore not been heard at this hearing and the tenant at liberty to reapply for this amended portion of her claim for compensation.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on May 01, 2005. The parties also agree that a new tenancy agreement was entered into verbally and by e-mail for a fixed term of 10 months on July 01, 2012 ending on April 30, 2013. At that time rent was increased to \$1,250.00 per month and was due on the 1st day of each month. The tenant vacated the rental unit on March 01, 2013.

The tenant testifies that the landlord came to the tenant's house on January 31, 2013 and verbally gave the tenant notice to leave the rental unit. The landlord also provided a letter stating that the landlord would not be renewing the house rental contract on May 01, 2013. The tenant testifies that while the landlord was at the house he informed the tenant that they will be calling it a caretaker's position. The tenant testifies that based on this letter she acted in good faith not realizing it was not a legal notice and on February 18, 2013 gave the landlord 10 days notice to vacate effective on February 28, 2013.

The tenant testifies that there was a roommate living with the tenant and the tenants son who also overheard the landlord state that the tenant must vacate the rental house and that it would be used for a caretaker and due to this the tenants roommate moved out that same evening leaving the tenant without another source to help pay the rent.

The tenant seeks to recover compensation of one month's rent of \$1,250.00 due to the landlords notice. The tenant also seeks to recover the filing fee of \$50.00

The tenant calls her witness who is the tenant's adult son. The witness testifies that he was with his mother when the landlord came to the house on January 31, 2013. The

witness testifies that the landlord said they were giving the house to someone else and calling it a caretaker's position. The witness testifies that the landlord said they could leave anytime within the next three months. The witness testifies that the roommate overheard the landlord and moved out that night.

The landlord declines the opportunity to cross examine this witness.

The landlord testifies that the tenant originally gave written notice to end the tenancy on May 23, 2012 effective on July 31, 2012. The landlord testifies that they had accepted the tenants notice and then the tenant later rescinded that notice. The landlord testifies that he spoke to the tenant and they agreed upon a 10 month contract until April 30, 2013. This was followed up by e-mail in which the tenant agreed to rent the unit for a monthly rent of \$1,250.00 for 10 months.

The landlord testifies that on January 31, 2013 they decided not to renew this contract with the tenant and verbally informed the tenant of this and followed up by putting this in writing to the tenant. The tenant then provided the landlord with a 10 day written notice to vacate on February 18, 2013 and moved from the rental unit on March 01, 2013. The landlord testifies that due to the location of the house the landlord had concerns about the house being empty so they have someone staying at the house a few nights a week to deter transient people from coming to the house.

The tenant cross examines the landlord and asks the landlord if the landlord had stated that they were expecting some funds to do up the house and use it for their own purposes. The landlord responds and states that this is not true. The tenant asks the landlord if he knows that someone is living at the house full time. The landlord responds that there is only a bed in the house and someone stays there part time. The tenant asks the landlord if the tenant had previously sent the landlord an e-mail about transient people in the area. The landlord responds that yes the tenant had and that is why they have taken these precautions by having someone stay at the house a few days a week.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. I refer the parties to the Residential Tenancy Policy Guidelines # 30 which deals with fixed term tenancies. In this guideline it gives a definition of a fixed term tenancy as follows:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date. At least one Court has interpreted "predetermined expiry date" to include a provision in the tenancy agreement that the tenancy will terminate as a result of a specified occurrence or circumstance.

Fixed Term Tenancy Agreement

The agreement must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy continues as a month to month tenancy.

In this matter this was a verbal agreement between the landlord and tenant to imply a fixed term tenancy for 10 Months from July 01, 2012 to April 30, 2013. The tenant confirmed her acceptance of this by e-mail however there is no evidence to show that there was a provision that the tenancy would be terminated on April 30, 2013 as a result of a specified occurrence or circumstance. There was no agreement made as to whether or not the tenancy would end on that date or continue on a month to month basis. Consequently the terms of this verbal agreement and acceptance e-mails do not specify that the tenant must vacate the rental unit at the end of the fixed term.

However this matter concerns whether or not the tenant received a legal notice to end tenancy and in this case the parties agree that no legal Two Month Notice to End Tenancy was served upon the tenant. The tenant has testified that she acted in good faith after receiving the landlord's verbal notice and letter to vacate the unit. The tenant testifies that therefore she is entitled to compensation because the landlord served the tenant with a Notice under s. 49 of the *Act*.

In Order for a Notice to be effective and legally binding it must be a proper notice on a form as specified under s. 52 of the *Act* which states

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

S. 51 of the *Act* states:

51 *(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

As no legal Notice was served upon the tenant pursuant to s. 49 of the *Act* then I find it was the tenant's choice to move from the rental unit on March 01, 2013 and therefore the tenant is not entitled to compensation equivalent to one month's rent.

Conclusion

The tenant's application for compensation is dismissed without leave to reapply.

The amended portion only of the tenants claim is dismissed with leave to reapply.

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: May 15, 2013

Residential Tenancy Branch

