



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Property Mgmt.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This is an application filed by the Tenant for an order cancelling a notice to end tenancy issued for cause, a monetary order claim for money owed or compensation for damage or loss, an order for the Landlord to comply with the Act and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

At the beginning of the hearing, both parties confirmed that the Landlord served the Tenant with a 1 month notice to end tenancy issued for cause dated October 30, 2013 with a specified effective vacancy date of November 30, 2013. The one reason for cause noted is "Rental unit/site must be vacated to comply with a government order." The Tenant has confirmed receipt of the notice issued by the City of Kelowna seeking the Landlord to issue a notice to end the tenancy. Both parties have acknowledged that the City of Kelowna has granted an end date of January 31, 2014 and have accepted it as such. The Tenant, C.R.R. states that an end of tenancy is no longer being disputed. As both parties have accepted the end of tenancy for January 31, 2014, I grant an order of possession for January 31, 2014 at or before 1:00 pm to the Landlord.

The Tenant has also clarified that she is only seeking a monetary claim for compensation and does not require an order for the Landlord to comply with the Act. As such, no further action is required for this portion of the application.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on January 1, 2011 on a fixed term tenancy ending on June 30, 2011 and then on a month to month basis thereafter as shown by the signed copy of the tenancy agreement. This was later extended to December 30, 2011 and is currently on a month to month basis. The monthly rent is \$1,050.00 payable on the 1st of each month and a security deposit of \$525.00 was paid on December 20, 2010.

The Tenant seeks a monetary claim of \$2,025.00, consisting of compensation equal to ½ of the remaining 90 days of rent paid of \$1,575.00 and \$450.00 for future moving expenses. The Tenant states that the Landlord misrepresented the tenancy agreement by renting an illegal suite which caused an end of the tenancy because of the order from the City of Kelowna. The Tenant states that if this was a legal suite that they would not have to incur these costs. The Landlord disputes the Tenant's claims by stating that the Tenants were aware that the rental unit was an illegal suite. The Landlord refers to a submitted copy of the Tenant, C.A.R.'s Facebook page which states, "...We always knew it had to be illegal for certain reasons but we rented through Remax and figured everything would be on the up and up." The Landlord states that this clearly shows that the Tenants were aware of the "illegal suite" and were aware of the possibilities and that they cannot be held liable.

Analysis

I find based upon the evidence provided by both parties that the Tenant has failed to establish a claim for a monetary order. The Tenant's were clearly aware of the nature of the rental and the possible consequences as shown by the Tenant's Facebook page comments. The Tenants still occupy the rental unit and as such have not yet incurred any out of pocket expenses (moving). The Tenant's claim for compensation as such is for a penalty and not compensation. The Residential Tenancy Act does not provide for the award of a penalty. As there are no losses incurred the Tenant has failed in her application. The Tenant's monetary claim is dismissed.

Conclusion

The Landlord is granted an order of possession for January 31, 2014.
The Tenant's monetary claim is dismissed without 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: December 24, 2013

Residential Tenancy Branch

