



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

The tenant originally submitted her Application for Dispute Resolution on December 5, 2013. At that time she was seeking only compensation in the amount of \$550.00 related to the landlord's ending of the tenancy for use of the rental unit.

On March 17, 2014 the tenant submitted an amended Application to increase her claim to \$2,559.00 for compensation for events that occurred during the tenancy. The tenant submits that she tried to serve the landlord with the amended Application on March 17, 2014 but was told they were in Utah.

The tenant submits she then tried to get a hold of the landlords' son but that he did not return any of her calls. She states that after she could not get a hold of the son she placed the amended Application and her evidence in the landlord's mail box on March 21, 2014.

Residential Tenancy Branch Rule of Procedure 2.5 states that if an applicant wishes to amend their Application they must provide a copy of their revised Application at least 5 days prior to the hearing date. Definitions provided in the Rules of Procedure stipulate that in the calculation of time expressed as "at least" a number of days, the first and last days, as well as weekends, must be excluded.

As such, in order to be considered served, in these circumstances the tenant would have had to serve the documents to the landlord no later than March 19, 2014. In addition the landlord confirmed that they are still out of the country. Therefore, as the tenant was late serving the landlord and the landlord can confirm that he has not received the amended Application I do not accept the tenant's amendment.

Despite both parties providing a substantial volume of evidence and testimony relating to a number of issues during the tenancy this decision records only the relevant evidence and testimony to the issue for which the tenant seeks compensation.

In addition, I advised both parties during their testimony that much of what they were testifying to had little or no relevance to the issues that were before me in this hearing. When I advised the landlord of this while he was speaking about the start of the tenancy he quickly moved on to issues related to the ending of the tenancy.

When I advised the tenant she complained that I had allowed the landlord to speak on unrelated issues. I therefore let her speak about a number of issues that had no bearing on the outcome of this Application. When I asked her to explain how her testimony had any relevance to her Application she became argumentative and I closed all testimony from both parties.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 51 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on December 5, 2011 for a monthly rent of \$600.00 due on the 1st of each month with a security deposit of \$300.00 paid. The parties signed a series of short fixed term tenancy agreements. The tenant did not provide any copies of the tenancy agreements.

The landlord provided 3 fixed term agreements for the periods outlined as follows:

1. For the period December 5, 2011 to March 1, 2012. The agreement stipulates the tenant must vacate the unit at the end of the term but this stipulation is only initialed by the landlords. This agreement was signed by the parties by December 11, 2011;
2. For the period March 1, 2012 to May 31, 2012. The agreement stipulates the tenant must vacate the unit at the end of the term and the stipulation is initialed by both the landlords and the tenant. This agreement was signed by the parties on April 22, 2012; and
3. For the period June 1, 2012 to September 30, 2012. The agreement stipulates that the tenant must vacate the unit at the end of the term and the stipulation is initialed by the landlords and the tenant. This agreement was signed by the parties on June 1, 2012.

I note that the tenant testified that they did not enter into the third agreement until September 6, 2012 but that her signature on the document is dated June 1, 2012.

The tenant submits that on September 6, 2012 the landlord told her she had to move out at the end of September 2012 so the landlord's niece could move into the unit. The tenant testified that the landlord provided her a written note telling her to move out.

The tenant provided into evidence the following documents:

- A copy of the landlord's typewritten note dated September 4, 2012. The note states: "As you know our tenancy agreement for above mentioned address will terminate on September 30, 2012." The note goes on to state the landlord does not intend to renew the tenancy agreement and asks that the tenant vacates the unit by October 1, 2012.
- A copy of her own notice to end tenancy dated September 6, 2012 stating that she would vacate the rental unit by October 31, 2012.
- A copy of an agreement between the parties dated November 3, 2012 allowing the tenant to remain in the unit until December 1, 2012; and
- A copy of an agreement between the parties dated December 17, 2012 allowing the tenant to remain in the unit until February 1, 2013.

The tenant submits that she provided the landlord with a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property because they had indicated to her that they wanted her niece to live in the unit. The tenant testified the landlords refused to sign the document. The tenant submits that the landlords refused to sign the Notice because they did not want to pay her compensation.

The tenant testified that she need the landlords to sign an official notice so that she could take to Safer and to her income assistance worker and because the landlords would not sign the 2 Month Notice she got them to sign a mutual agreement to end the tenancy.

Analysis

Section 44(1)(b) of the *Act* stipulates that a tenancy will end if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

I find the tenant's testimony that she did not sign the last fixed term tenancy agreement until September 6, 2012 is not supported by the copy of a fixed term tenancy agreement for the last fixed term that the parties entered into that confirms that the tenant signed the last agreement on June 1, 2012 submitted by the landlord.

As such, I find the tenant was aware in June 2012 that her fixed term tenancy would end at the end of September 2012 and that she must vacate the unit at that time. I also find that the landlord was under no obligation at that time to renew the tenancy if they did not want to for any reason. I note in these circumstances the landlord is not required to provide any other additional notice to the tenant that the tenancy will end

because they were aware it was going to end when they entered into the tenancy agreement itself.

I accept the parties did continue to extend the tenancy on a month by month basis over the course of several months.

Section 44(1)(c) stipulates that a tenancy may end if the landlord and tenant agree in writing to end the tenancy. I note the parties entered into a mutual agreement to end tenancy each time that they wrote a written agreement that extended the move out date for the tenant, including the final mutual agreement that was recorded in the Mutual Agreement to End Tenancy Form provided on the Residential Tenancy Branch website.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or
- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

From the tenants own testimony I find that she never did receive a 2 Month Notice to End Tenancy for Landlord's Use of Property as allowed under Section 49 and that the tenancy ended as the result of a mutual agreement to end tenancy under Section 44 despite what the landlord may or may not have intended to use the property for their own personal reasons.

As the compensation allowed for under Section 51 requires that the tenant receive a notice to end the tenancy under Section 49 and I have found that the tenant did not

receive such a notice I further find that she is not entitled to any compensation allowed under Section 51.

Conclusion

For the reasons noted above, I dismiss the tenants Application for Dispute Resolution in its entirety.

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: March 27, 2014

Residential Tenancy Branch

