



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was scheduled in response to the tenant's application requesting compensation for damage or loss under the Act in the sum of \$3,300.00.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The landlord received the tenant's evidence on January 4, 2015 and had time to review. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$3,300.00 related to a 2 Month Notice ending tenancy for landlord's use issued on October 1, 2013?

Background and Evidence

The tenancy commenced on October 1, 2013 for a 6 month fixed term; the tenant was to vacate effective October 31, 2013. Rent in the sum of \$1,100.00 was due on the 1st day of each month. A security deposit was paid and has since been returned to the tenant. This was the last, in a series of fixed-term tenancies between the parties.

On October 1, 2013 the landlord issued a 2 month Notice ending tenancy for landlord's use of the property; the landlord's close family member planned on occupying the unit. The tenant disputed the Notice and on November 12, 2013 a decision was issued in relation to the tenant's application to cancel the Notice.

A copy of the tenancy agreement, Notice ending tenancy, November 12, 2013 decision and written notice the landlord's daughter would reside in the unit effective December 1, 2013 was supplied as evidence.

During the hearing the parties reached a mutually settled agreement that was set out in the November 12, 2013 decision. The landlord agreed the tenant could remain in the unit until June 30, 2014 at which point the tenancy would end. The parties agreed that the tenant would not have to pay rent for the last month of the tenancy.

There was no dispute that on January 8, 2014 the tenant gave 10 days' notice that she would vacate and that the tenancy ended on January 19, 2014. The landlord agreed to return the balance of rent paid from January 20, 2014 to the end of the month. The security deposit was returned.

The tenant has now requested compensation, in accordance with section 51 of the Act, based on the October 1, 2013 Notice ending tenancy. The tenant has claimed the equivalent of 1 month's rent plus compensation in the sum of double the monthly rent. The tenant believes that the landlord did not place her family member in the home and has seen other people at the property.

The landlord said that their daughter intended to reside in the home but when they reached a mutual agreement with the tenant their daughter decided to attend university in Victoria. When the tenant gave notice ending the tenancy in January the daughter was not available to move into the unit. The landlord was not able to find new occupants for 1.5 months.

Analysis

Section 63 of the Act provides:

Opportunity to settle dispute

63 (1) *The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*

(2) *If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.*

I find, that once the parties reached the mutually settled agreement issued on November 12, 2013 the matters related to the Notice ending tenancy issued on October 1, 2013 were resolved. If the tenant had wished to receive the benefit of the Notice she was free to proceed with the hearing, during which time the landlord would have had the burden of proving the reason given on the Notice. Instead the parties reached a mutually settled agreement allowing the tenant to remain in the unit well beyond the November 30, 2014 effective date of the Notice and the provision of some compensation.

I find that when the tenant gave notice to the landlord that she was vacating the unit prior to the agreed upon date in June 2014, the tenant essentially breached the terms set out in the mutually settled agreement. Once the tenant failed to meet her end of the

bargain she could not expect the landlord to meet other conditions of the agreement, which benefitted the tenant only. The landlord was left to locate new occupants for the unit and lost rent revenue as a result.

In relation to the return of rent paid beyond January 19, 2014, the landlord believed they may have been required to do so, as set out in section 50(2) of the Act. However, as the Notice was not examined during the previous hearing and agreement was reached, I find that the return of rent paid was simply made as a show of good faith.

Therefore, pursuant to section 62(3) of the Act, I find that the terms of the mutually settled agreement issued on November 12, 2013 were not upheld by the tenant and that the tenant cannot then benefit from her decision to end the tenancy early, contrary to the agreement. Further, the landlord was no longer bound by the requirements of the Notice, as the mutually settled agreement had been reached.

Therefore, I find that the application is dismissed.

Conclusion

The application is dismissed.

This decision is final and binding and 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 23, 2015

Residential Tenancy Branch

