



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to: cancel a notice to end tenancy for cause; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and, to recover the filing fee from the Landlords.

Preliminary Issues

The Tenant and one of the Landlords appeared for the hearing and provided affirmed testimony. An advocate for the Tenant also appeared for the hearing and explained that the Tenant had requested her to appear to assist her in interpreting and understanding any legal language that may be used during the hearing; she did not provide affirmed testimony. However, the Tenant’s advocate exited the conference call half way through the hearing and did not dial back in. After allowing a short period of time for the Tenant’s advocate to dial back in, which she did not, the hearing continued. However, I ensured that the Tenant understood the proceedings and what was being discussed without the use of complex legal language and confirming with the Tenant multiple times throughout the hearing of her understanding, which she did.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have considered the evidence provided by the parties in this case but I have only documented that evidence which I relied upon to make findings in this decision.

The Landlord confirmed receipt of the Tenant’s Application and the Tenant’s documentary evidence. However, the Tenant denied receipt of the Landlord’s evidence. The Landlord explained that she had served her documentary evidence to one of the

two addresses the Tenant had detailed on her Application which was contained in the Tenant's written evidence. I examined the Tenant's written evidence which does indicate, for some unknown reason, two address for the service of documents. I was satisfied that the Tenant was not in receipt of the Landlord's evidence but I was also satisfied that the Landlord had met her obligations under the Act to serve the Tenant with her evidence. Therefore, I explained to the parties that I would continue the hearing without considering the Landlord's documentary evidence but would allow the Landlord to provide the written evidence into oral testimony. I informed the parties that if it became essential for the Landlord to rely on her documentary evidence, at that point I would consider adjourning the hearing for this purpose.

As a result, the hearing continued. The parties confirmed that the tenancy had ended and the Tenant had vacated the rental unit. Therefore, I informed the Tenant that as she had vacated the rental unit, her Application to cancel the notice to end tenancy was now a moot issue. As a result, I dismissed the Tenant's Application to cancel the notice to end tenancy. The Tenant and her advocate understood this finding.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation for having to vacate the rental unit pursuant to the notice to end tenancy?

Background and Evidence

Both parties agreed that this tenancy started on July 1, 2013. A written tenancy agreement was completed and the Landlord was provided with a \$375.00 security deposit. Rent for the unit was payable in the amount of \$700.00 on the first day of each month.

The Landlord's affirmed testimony is that at the beginning of July 2014, due to several issues she was experiencing with the Tenant which included an illegal sublet of her rental unit, she attempted to end the tenancy by way of mutual agreement. This was done by sending the Tenant an email with a mutual agreement to end tenancy document for the Tenant to sign. However, the Tenant did not sign the document and instead filed for dispute resolution (the file number for which appears on the front page of this decision). That Application was made on July 7, 2015.

As the Tenant failed to sign the mutual agreement to end the tenancy, the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "Notice") on July 7, 2015. The Landlord testified that this was posted to the rental unit door and was also emailed

to the Tenant as the Landlord was aware the Tenant was out of the country for an extended period of time. The Notice was provided into evidence by the Tenant and one of the reasons indicated on the Notice for ending the tenancy was because the Tenant had sublet the rental unit without getting the Landlord's permission in writing. The vacancy date on the Notice is August 31, 2014.

The Landlord testified that the Tenant returned to the rental unit and vacated it on August 31, 2014. The Landlord explained that during the hearing, which took place on September 9, 2014 that was set to hear the Tenant's previous application, the agents for the Tenant appearing at that hearing withdrew the Tenant's Application as the Tenant had moved out of the rental unit.

The Tenant confirmed receipt of the Notice by email on July 7, 2015. The Tenant testified that she had informed the Landlords in writing that she was going to be working in Spain and had to leave Canada for three to four months. The Tenant testified that she got authorisation from the Landlord to sublet the rental unit. However, after a week the Landlords ended her tenancy with the Notice. The Tenant explained that she had to quickly travel back from Spain to Canada in order to move out of the rental unit and as a result, the Landlord should be liable to pay the costs associated with this. This included flight costs, costs for transport of a pet and a bike, pet vaccinations to take them back to Spain, a pet export fee, and the cost of a hire car. The total amount being claimed by the Tenant is \$1687.00. The Tenant provided invoices for the amounts she was seeking to claim from the Landlord.

The Tenant submits that the Landlord is liable for these amounts because her tenancy was illegally ended with the Notice because it was not valid. The Tenant states that her e-mail evidence of June 4, 2015 shows that she obtained the Landlord's written permission to sublet the rental unit. The June 4, 2014 email shows the Tenant informed the Landlord that she would be leaving the rental unit for a job opportunity and would have a friend move into the rental unit for which he would pay rent. The Tenant pointed to an email sent by the Landlord on June 12, 2014 where the Landlord took no issue with the Tenant subletting the rental unit.

The Landlord responded stating that the Tenant did not get her written or verbal permission to sublet the rental unit and the Tenant had already made the necessary arrangements for the sub-tenant to take occupancy of the unit before the Tenant had obtain written consent. The Landlord acknowledged that in her response to the Tenant's June 4, 2014 email she did not expressly say no to the Tenant, but equally she did not

give her permission that she could do this because this was the reason why the Tenant was served with the Notice.

The Landlord submitted that the Tenant moved out in accordance with the Notice. The Landlord stated that she should not have to bear the costs claimed by the Tenant because she was moving back to Spain and bringing along with her bikes and her pets and that it was her choice to leave the country.

Analysis

Section 47(4) of the Act provides a tenant with 10 days to dispute a Notice by making an Application. In this case, the Tenant confirmed receipt of the Notice by email on July 8, 2015. I am unable to determine from the previous decision dated September 9, 2014 whether the Tenant applied to dispute the Notice served to her on July 7, 2015. However, the evidence before me suggests that she did make the Application on the same day the Notice was served to her.

When a tenant makes an Application to dispute the Notice, they do so with the request to have it cancelled and allow the tenancy to continue. For this to happen, the Landlord must bear the burden to prove the reasons for ending the tenancy on the Notice. If the tenant vacates the rental unit before the Notice is determined in a hearing, then it can only be concluded that the Tenant vacated the rental unit voluntarily, and in this case in accordance with the vacancy date on the Notice.

The evidence before me is that the Tenant's agent withdrew the Application to dispute the Notice at the previous hearing as the Tenant had moved out. Therefore, no determination was made on the Notice as the tenancy had already ended. Therefore, I find that the Landlord bears no liability for the costs claimed by the Tenant as a result of her vacating the rental unit in accordance with the Notice. A landlord has the right to issue a tenant with a notice to end tenancy at any time during a tenancy and if the tenant disagrees with it, the tenant has a right to dispute the Notice and have it cancelled.

In this case, I find the Tenant failed to fully pursue her remedy to cancel the Notice and failed to take the opportunity to put forward her arguments against the reasons on the Notice. Instead the Tenant moved out of the rental unit in accordance with the vacancy date of the Notice and now seeks to argue the reasons on the Notice. Notwithstanding the Tenant's arguments for the reasons on the Notice, I find the Tenant took the decision to move out of the rental unit in accordance with the Notice of her own accord.

In addition, I also accept that the Landlord should not be liable for costs associated with the Tenant's own decision to move from one country to another. There is not sufficient evidence before me that the Landlord forced the Tenant to move from Spain to Canada. As a result, I dismiss the Tenant's monetary claim in its entirety.

Conclusion

The Tenant moved out of the rental unit in accordance with the vacancy date on the Notice. Therefore, the Landlord is not liable for the resulting moving costs claimed by the Tenant for having to vacate the rental unit and leave the country. The Tenant's Application is dismissed without leave to re-apply.

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 02, 2015

Residential Tenancy Branch

