



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, MNDC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

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

The parties agreed the tenant vacated the rental unit by December 31, 2015. As such, there is no longer a need to cancel the Notice to End Tenancy and I amend the tenant's Application for Dispute Resolution to exclude the matter of the Notice.

In her original Application for Dispute Resolution the tenant indicated that she was seeking compensation in the amount of \$1,700.00 for ½ month's rent for each of October, November, December and possibly January.

The tenant had submitted, on December 22, 2015, as part of her evidence a Monetary Order Worksheet in which she states she is seeking reduced rent for the months of October, November, December, and possibly January 2015 and for return of her security deposit and December rent back – for a total claim of \$2,100.00.

The tenant did not submit an Amendment to an Application for Dispute Resolution form seeking to either increase her claim amount or add any additional claims such as rent for the month of December and/or her security deposit. As such, I do not accept any changes to the tenant's original Application and this decision is based solely on the original Application claiming \$1,700.00 for ½ month's rent for each of October, November, December, and January.

At the outset of the hearing the tenant clarified that she no longer sought compensation for ½ month's rent for January 2016. As this is a reduction in the tenant's claim, which does not prejudice the landlord, I accept the amount of the tenant's claim is reduced to \$1,275.00.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on April 7, 2014 for a 1 year and 1 day fixed term tenancy beginning on May 1, 2014 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$400.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on November 15, 2015 with an effective vacancy date of January 1, 2016 citing the rental unit must be vacated to comply with a government order.

The tenant submitted that the landlord had sent her a text message in October 2015 stating that the tenant was going to have to leave the rental unit as soon as possible. The tenant stated that she later found out by contacting the Residential Tenancy Branch that a text message was not a legal notice to end tenancy.

The tenant submitted that the landlord then waited until “the last possible moment” to issue her a 1 Month Notice. She confirmed it was received on November 15, 2015.

The tenant submitted that the landlord should have been aware of the problems with the unit when she purchased the property and she should have had it all resolved in the summer so that the tenant would have had more options in terms of locating a new rental unit.

The tenant also submitted that, in the alternative, the landlord should have postponed having the local bylaw enforcement inspections so that the tenant wouldn't have had to look for a place during her busiest time of year in retail.

She states as a result, she had to find a new place and move out at a time of year when she could not have a nice Christmas with her daughter.

The tenant seeks compensation for loss of quiet enjoyment because the landlord made her worry and stressed out when she did not know if she was evicted in October because of the text message and then because of the timing of the issuance of the official Notice to End Tenancy.

The landlord submitted that the text message she sent to the tenant in October stated the unit must be vacated “as soon as we can” not “as soon as possible”. She states she did not intend for the tenant to take the text message as a notice to end the tenancy.

The landlord also testified that she had advised the tenant she would be seeking an extension of time from the local authorities to end the tenancy if it meant the tenant could be given more time.

The landlord submitted into evidence a letter dated December 4, 2015 advising the tenant that she had obtained an extension from local authorities so the tenant could stay until January 15, 2016, the day after this hearing was scheduled.

As noted above the tenant vacated the rental unit by December 31, 2015.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

Section 47(2) states that a notice given under Section 47 must end the tenancy on a date that is not earlier than 1 month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

From the evidence and testimony of both parties I find the landlord was providing the tenant with information in her text messages of October 2015. This information provided the tenant with a forewarning that the tenancy would likely have to end soon. I find that this forewarning is not required under the *Act* but was provided as a courtesy to the tenant.

I find the landlord had authority under Section 47(2) of the *Act* to issue the 1 Month Notice to End Tenancy for Cause at any time before November 30, 2015 to be effective on December 31, 2015. I find by issuing the Notice on November 15, 2015 the landlord actually provided the tenant with an additional 15 days' notice that was not required under law.

I also find the landlord even secured an extension in the deadlines provided to her by the local authorities in an attempt to assist the tenant with her concerns about the timing of the Notice to End Tenancy.

For all of these reasons, I find the tenant has failed to establish that the landlord has violated the *Act*, regulation or tenancy agreement in any way. I also find that the landlord took exceptional steps to attempt to keep the tenant informed of events so that the tenant had the most time to make arrangements should the tenancy need to end.

And finally, I note that despite the tenant's testimony that she had to move out over Christmas she had applied to dispute the Notice to End Tenancy with a hearing set for January 14, 2015 so there was no requirement under the *Act* for the tenant to vacate the rental unit until such time as her Application was adjudicated and the Notice found to be effective. As such, there was not a need for the tenant to move at Christmas.

Conclusion

Based on the above, I dismiss the tenant's 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: January 14, 2016

Residential Tenancy Branch

