

Decision

Dispute Codes: CNL, MNDC, FF

Introduction

This is the Tenants' application to cancel a Notice to End Tenancy for Landlord's Use; for a Monetary Order for compensation for damage or loss; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided by the Tenant prior to the Hearing. The Landlord did not provide any evidence until the day before the Hearing, which is too late according to the rules, and therefore was not considered. The parties gave affirmed testimony and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Should the Notice to End Tenancy issued November 29, 2009, be cancelled?
- (2) Are the Tenants entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Tenants gave the following testimony and evidence:

The Tenants were served with the Notice to End Tenancy for Landlord's Use on November 31, 2009. The Tenants provided a copy of the Notice to End Tenancy in evidence.

The Tenants mailed the Landlord the Notice of Hearing documents, by registered mail, on December 8, 2009. The Tenants provided a tracking number for the registered mail documents.

The Notice to End Tenancy disclosed no reason for ending the tenancy. The Tenants signed a tenancy agreement with a fixed term ending February 1, 2010. At the end of the fixed term, the tenancy continues on a month-to-month basis. The Tenants submitted that therefore, the earliest date the Landlord could end the tenancy for Landlord's use would be April 30, 2010, and it would have to be with reason. The Tenants provided a copy of the tenancy agreement in evidence.

The Tenants have provided the Landlord with their notice to end the tenancy effective February 1, 2010.

The Tenants are applying for a monetary order in the amount of \$120.00 to compensate them for lost work, four hours at \$32.00 per hour.

The Landlord gave the following testimony and evidence:

The Landlord disputed that the tenancy could continue on a month-to-month basis after the end of the fixed term. The Landlord submitted that the Tenants initialed the tenancy agreement indicating that at the end of the fixed term the tenancy would end. She stated that she issued the Notice to End Tenancy because she wanted to be sure the Tenants would move out at the end of the term.

Analysis

The Notice to End Tenancy issued November 29, 2009, does not give a reason for the Landlord to end the tenancy and therefore is cancelled, and of no force or effect.

It is interesting to note that the copy of the tenancy agreement provided by the Tenants is unclear as to the terms of the tenancy. There is a paragraph in the agreement that gives the parties a choice between two options at the end of the fixed term:

- i) The tenancy may continue of a month-to-month basis or another fixed length of time; (this box has been ticked)

- ii) The tenancy ends and the tenant must move out of the residential unit. If you choose this option, both the landlord and tenant must initial in the boxes to the right . (this box has NOT been ticked, but both parties initialled the boxes to the right.

In a situation where the terms of a tenancy agreement are not clear, the tenancy agreement reverts to a month-to-month tenancy with the standard terms as set out in the *Residential Tenancy Regulation*.

I note that the Tenants have provided the Landlord with their notice to end the tenancy at the end of the term.

The Tenants have applied for a monetary order for compensation for lost wages in preparing for the Hearing. These costs are not recoverable by either party and this portion of the Tenants' application is dismissed.

The Tenants have been partially successful in their application and are entitled to recover the cost of the filing fee of \$50.00 from the Landlord.

I hereby provide the Tenants with a Monetary Order in the amount of \$50.00 against the Landlord.

Conclusion

The Notice to End Tenancy issued November 29, 2009, is cancelled and is of no force or effect.

I hereby grant the Tenants a Monetary Order in the amount of \$50.00 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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.

January 26, 2010

Date of Decision
