



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This was the hearing of an application by the tenant for a monetary order. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Is the applicant entitled to a monetary order and if so, in what amount?

Background and Evidence

The tenant rented the basement of the landlord's house. I was not provided with a copy of the tenancy agreement, but I was advised that it was a month to month tenancy. The tenant testified that she was improperly "evicted" from the rental unit in September, 2010 and she has claimed damages in the amount of \$4,000.00 for what she claimed was an illegal eviction.

The tenant submitted copies of her e-mail exchanges with the landlord. According to the e-mail messages the tenant made complaints about noise from the landlord's suite directly above the rental unit. The tenant complained about noise from heavy stepping on the upstairs floor. The tenant complained about barking dogs in the upstairs unit and about the need to clean up "dog poop" in the backyard.

The landlord responded to the tenant's complaints with e-mail messages telling the tenant that the rental arrangement was not working out. The landlord said that he had decided to keep the suite empty and not rent it out. He asked the tenant to: "Please plan to move to another accommodation as soon as possible."

On September 19, 2010 the tenant responded to the landlord's requests that she move out of the rental unit. She said that relocating was an extreme hardship. She said that she did not feel that it was fair to have to move at her own expense. She concluded by saying:

We have located another accommodation that is suitable but we would need your agreement to compensate us for the cost of relocation. We can provide three written moving estimates. Will you be willing to do this to help us move out of here? This way, we think we can be out by October 15th or maybe even earlier if movers are available and if our rental application for the new accommodation is approved and we see no reason it won't be approved.

Another alternative to help us with our expenses so we can move out of here sooner is to let us stay here rent free for two months. This will provide us with enough money to pay another damage deposit and another set of moving expenses. We have not yet looked into moving costs but we will do this next week if this alternative is feasible.

Absent any agreement on this, we need to stay here at least until our house sells and we find a new home to purchase and we do not know how long that will be.....Meanwhile, we remain willing to do what we can to make this work if assisting us with our relocation costs is no something you will entertain.

The landlord responded by saying that he would return the tenant's security deposit right away to help offset the tenant's moving expenses, but he was not prepared to pay for the tenant's move. He also said that he would not charge the tenant rent for October if she moved out by October 15, 2010. The tenant responded by proposing that the landlord return the damage deposit, pay the tenant 4600.00 for moving and give her October 1st to 15th rent free, then she would commit to moving by October 15th.

The landlord refused to agree to pay the tenant a sum of money to move. The tenant responded saying that she would move sometime in October and would not be paying rent for October: "but this does not represent any form of agreement whatsoever." The tenant did not pay rent for October and she did move out on or about October 15th. She filed her application for dispute resolution on October 13, 2010.

Analysis and Conclusion

Section 44 of the *Residential Tenancy Act* specifies that a tenancy ends only if one of the enumerated circumstances applies. Absent an agreement in writing or an undisputed Notice to End Tenancy in the approved form given by the landlord, the tenant was under no obligation to move. The landlord did not serve the tenant with a Notice to End Tenancy. The tenant elected to move despite the fact that the landlord

did not serve a Notice to End Tenancy. She claimed to have been evicted by the landlord, but I do not find that to be the case. It was open to the tenant to remain in the rental unit and to dispute a Notice to End Tenancy if and when given by the landlord; instead she elected to negotiate with the landlord and when the landlord refused to accede to her request for compensation, she chose to move in any event.

These are not circumstances that entitle the tenant to compensation. It is incumbent upon the tenant to inform herself as to her rights and obligations and then to take a position based on that information. The tenant was not obliged to move out of the rental unit and she was not evicted from the rental unit. She chose to move out and having done so, I find that she is not entitled to claim damages. The tenant's application is dismissed without leave to reapply. I make no order with respect to the filing fee for this application.

Dated: February 18, 2011.
