



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OPB, MNDC, LAT, FF

Introduction

This hearing dealt with cross applications. The landlords applied for an Order of Possession and monetary compensation for loss of rent. The tenants applied to dispute a *Notice to End Tenancy for Cause* and for authorization to change the locks. Both parties requested recovery of the filing fee paid for their respective applications. Both parties appeared at the hearing and confirmed service of the hearing documents. Both parties were provided the opportunity to be heard and to respond to the submissions of the other parties.

Issues(s) to be Decided

1. Has the tenancy legally ended?
2. Are there grounds to continue with the tenancy?
3. Can the parties reach a mutual resolution to this dispute?
4. Is the landlord entitled to compensation for loss of rent?
5. Should the tenants be authorized to change the locks?
6. Award of the filing fee.

Background and Evidence

Upon consideration of the undisputed testimony and documentary evidence before me, I make the following findings. The one-year fixed term tenancy commenced September 1, 2009. The tenancy agreement identifies four co-tenants, requires the tenants to pay rent in the amount of \$1,800.00 on the 1st day of every month and that at the end of the

fixed term the tenancy may continue on a month-to-month basis. On November 25, 2009 the landlord and one of the co-tenants (herein referred to as KH) signed a *Mutual Agreement to End a Tenancy* with an effective date of December 31, 2009. KH moved her possessions out of the rental unit on November 26, 2009 and has not lived there since that date. On November 28, 2009 the landlord and one of the tenants had a verbal discussion whereby the landlord informed the tenant about the *Mutual Agreement to End a Tenancy* signed by KH and emailed it to the tenant. The tenants paid rent for December 2009. On December 4, 2009 both the landlords and the tenants filed an application for dispute resolution. The remaining tenants did not vacate the rental unit December 31, 2009 and provided the landlord \$1,800.00 for January 2010 which the landlord accepted for use and occupation only.

In filing their application, the landlords are seeking an Order of Possession for a breach of an agreement with the landlord. Upon enquiry, the landlords testified as follows. KH approached the landlords to inform them that there had been a break down in the relationship with the other tenants and that she would be looking for another place to live. KH indicated she wanted to be removed from the tenancy agreement. The landlords contacted the Residential Tenancy Branch and were informed that the joint tenancy would end if one tenant ended the tenancy. A *Mutual Agreement to End a Tenancy* was obtained from the Residential Tenancy Branch website and both the female landlord and KH executed the document on November 25, 2009.

Upon enquiry, the landlords confirmed that the landlords considered entering into a new tenancy agreement with the remaining tenants but decided against it, although the landlords were willing to extend the end of the tenancy one month. On November 30, 2009 the landlords met with the remaining tenants with an eye to receiving a proposal from the remaining tenants that would resolve some past issues in exchange for a new tenancy agreement. The landlords did not receive any such proposal during that meeting.

In making this application, the landlord requested compensation for an anticipated loss of rent for January 2010 as the landlords were of the position that the tenants would interfere with their ability to find new tenants. As I heard the tenants have paid the amount claimed by the landlords I do not find a loss of rent for January 2010 and the monetary claim was dismissed.

In making their application, the tenants are seeking to cancel a Notice to End Tenancy for Cause although I was not provided any evidence that such a Notice was served upon the tenants. The tenants proceeded to make an argument concerning the *Mutual Agreement to End a Tenancy* signed by the landlord and KH. The tenants pointed to an email from the landlord dated November 28, 2009 whereby the landlord indicates that the landlords are considering entering into a new lease with the occupants for the month of January 2010 provided an agreement is reached by December 2, 2009. The tenants submitted that when the parties met on November 30, 2009 it was not clear to them that the landlords were awaiting a proposal from the tenants. The tenants submitted that a new agreement was not received from the landlord by December 2, 2009 as indicated in the landlord's email and on December 3, 2009 an advertisement for the rental unit was seen on Craigslist.

The tenants submitted that KH only wanted to end the tenancy for herself and that it was not KH's intention to end the tenancy for the remainder of the tenants and that KH did not give genuine consent to end the tenancy. KH testified that she had approached the landlord to inform the landlord she was looking to move out and that she signed the *Mutual Agreement to End a Tenancy* with the intention it would end the tenancy for only her. KH also described how the other tenants have approached her and indicated to her that they intend to hold her responsible for damages or loss they may incur as a result of KH signing the *Mutual Agreement to End a Tenancy*.

The tenants referred to Important Notes that appear on the Residential Tenancy Agreement produced by the Residential Tenancy Branch and signed by the parties. Contained in the Important Notices it states that reference to "tenant" and "landlord"

have the same meaning as in the Act and that singular of these words includes the plural. Both the tenants and the landlords referred to Residential Tenancy Policy Guideline 13: *Right and Responsibilities of Co-Tenants* as support for their respective arguments which could be summarized as follows. The tenants are of the position one tenant of a fixed term co-tenancy agreement cannot agree to end a fixed term tenancy without the written consent of all the other co-tenants. The landlords pointed out that the tenants are co-tenants of a joint tenancy and not tenants in common with separate tenancy agreements; therefore, the landlords were of the position that one co-tenant can end a joint tenancy as one co-tenant cannot be distinguished separately from the other co-tenants under a joint tenancy agreement.

After hearing from the parties concerning their respective positions concerning the *Mutual Agreement to End a Tenancy*, I attempted to facilitate a mutual resolution to this dispute. Both parties made proposals for mutual resolution; however, the parties could not agree on mutually agreeable terms.

Finally, I heard that the tenants have already changed the locks to the rental unit. The landlord had given consent to change the locks provided the landlord be present during the change. The landlord was not present during the lock changing but has been given a copy of the key. The landlord had not yet verified that the key works in the new lock. As the locks have already been changed, I dismissed the tenant's request for authorization to change the locks.

Analysis

Although the tenants indicated they are disputing a Notice to End Tenancy for Cause in making this application, I find there was no such Notice issued to the tenants. However, from the tenant's submissions it is clear to me that they are seeking an Order for compliance with the Act, regulations or tenancy agreement and I amend their application accordingly. From the submissions before me, it is clear that both parties

are of a different interpretation of the applicability of a *Mutual Agreement to End a Tenancy* signed by one co-tenant and that is the only issue left for me to determine with this decision aside from recovery of the filing fee.

Section 44 of the Act provides for the ways a tenancy may end. I have reproduced section 44 below for the parties. Section 44 of the Act states:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 91 of the Act also provides that “except as modified or varied under the Act, the common law respecting landlords and tenants applies in British Columbia”. Co-tenants, co-tenancy or tenants in common are not terms defined by the Act. Rather, they are terms found in common law.

A Co-tenancy is also referred to as a joint tenancy. With respect residential tenancy agreements, a co-tenancy exists where two or more tenants rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement and have equal rights under the tenancy agreement. Tenants in common share the same premises, or portion thereof, and have entered into separate tenancy agreements with the landlord. Upon review of the tenancy agreement it is clear that there is a co-tenancy or joint tenancy between the parties.

It is not in dispute that one co-tenant and one landlord signed a *Mutual Agreement to End a Tenancy*. To find an end to a tenancy, one of the reasons provided under section 44 must apply. I find the applicable portion of section 44 that is at issue in this case is section 44(1)(c). Therefore, at issue is whether the execution of a written mutual agreement by one landlord and one tenant may end the tenancy in accordance with section 44(1)(c) of the Act.

I find that section 28 of the *Interpretation Act* applies to the *Residential Tenancy Act* in that “In an enactment words in the singular include the plural, and words in the plural

include the singular.” Throughout the Act reference is made to a tenant or a landlord, thus where those words appear, the words tenants and landlords also apply.

Both parties have referred to Residential Tenancy Policy Guideline 13 in their submissions. I have also referred to this policy guideline as well as Residential Tenancy Policy Guideline 30: *Fixed Term Tenancies*. Policy Guidelines are intended to provide a statement of the policy intent of the legislation and have been developed in the context of the common law and the rules of statutory interpretation. Policy Guidelines are intended to assist parties to understand issues that may be relevant to them. Policy Guidelines do not replace or supersede provisions of the Act or Residential Tenancy Regulations.

The tenants point out that in Policy Guideline 13, there is a statement that one co-tenant may end a periodic tenancy by giving proper notice and that all tenants must vacate the rental unit even if only one co-tenant gives notice; yet, the paragraph that applies to fixed term tenancies does not specifically indicate that all tenants must move out even if only one tenant enters into a mutual agreement to end the tenancy with the landlord. However, I do not find this difference in the Policy Guideline alters the requirements of section 44 of the Act. Section 44(1)(a)(i) permits a tenant to end a tenancy with proper notice but does not specifically provide that all co-tenants must give the notice to end tenancy. Similarly, section 44(1)(c) does not specifically provide that one or all co-tenants may or must sign a mutual agreement to end tenancy for either a periodic tenancy or a fixed term tenancy. Accordingly, I do not find that different information concerning periodic and fixed term tenancies in the Policy Guidelines makes it a requirement of the Act that all co-tenants must sign a mutual agreement to end tenancy.

Policy Guideline 30 also provides information with respect to ending a fixed term tenancy early. It states:

Early End to a Fixed Term Tenancy by Agreement

A landlord and tenant may agree in writing to end a fixed term tenancy before its expiry date.

Standard Term 14 in the tenancy agreement also provides that “the landlord and tenant may mutually agree in writing to end this tenancy agreement at any time”. I note that Policy Guideline 30 and the Standard Term of the tenancy agreement refer to a “landlord” and a “tenant” and I find that these words also include the plural version of these words. Policy Guideline 30 and the tenancy agreement do not make specific reference to ending the tenancy where there is more than one co-tenant or co-landlord.

In considering the Act as a whole, I find the tenant’s interpretation of the requirements of the Act is not consistent with the content and intent of the Act. For instance, consider the meaning of the word “landlord” as defined in the Act. Several persons or entities may meet the definition of “landlord” under a single tenancy agreement and include the owners of the property, property managers, and agents for the owners. Say, for example, a tenant enters into a mutual agreement with the property manager to end the tenancy. The tenant is not expected to obtain the written authorization of all other parties that meet the definition of landlord for the rental property as this may not be practical and different landlords for the same property may not agree to end the tenancy. Thus, with the consent of one landlord the tenant could end the tenancy by mutual agreement. Accordingly, the reserve would be true where the landlord wishes to end a tenancy by mutual agreement. Therefore, I find that a mutual agreement to end tenancy may be reached with the consent of one co-tenant, even when there is more than one co-tenant under the tenancy agreement.

Alternatively, the tenants raised the issue of genuine consent by claiming that KH did not intend to end the tenancy when she signed the mutual agreement to end tenancy. Above the space provided for the signature of the landlord and tenant, *The Mutual Agreement to End a Tenancy* states:

The parties recognize that **the tenancy agreement between them will legally terminate and come to an end at this time**. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act which states: “*The landlord and tenant agree in writing to end the tenancy.*”

[emphasis added]

Since there is only one tenancy agreement between the parties, I find that by executing the document the one and only tenancy agreement is legally terminated on the effective date specified in the mutual agreement. I do not find sufficient evidence that the landlords misrepresented facts to KH or unduly influenced or threatened KH to sign the *Mutual Agreement to End a Tenancy*. Since the agreement was signed by KH it is assumed that she read the document and understood its implications. Ignorance is not a basis to find the agreement to end tenancy to be invalid.

In light of the above analysis, I accept the landlord's position that the rights and obligations of co-tenants are not separately distinguishable under a co-tenancy agreement and that a fixed term tenancy agreement may end when a landlord and any one of the co-tenants mutually agrees to end the tenancy in writing.

In summary, I uphold the *Mutual Agreement to End a Tenancy* as valid and that the tenancy agreement entered into by the parties in August 2009 legally ended on December 31, 2009. I grant the landlords' request for an Order of Possession effective January 31, 2010. The Order of Possession provided to the landlords must be served upon the tenants and may be enforced in The Supreme Court of British Columbia as an Order of that court.

Both parties are ORDERED to comply with the Act until January 31, 2010. Accordingly, the landlords must give the tenants proper notice to enter the rental unit in order to

show the rental unit to prospective tenants and the tenants must not interfere with the landlords' right to show the rental unit to prospective tenants.

As the landlords were largely successful with this application, I award the filing fee to the landlords. The landlords are authorized to recover the filing fee by deducting \$50.00 from the tenants' security deposit.

Conclusion

The tenancy ended by mutual agreement. The landlords are entitled to regain possession of the rental unit and are provided an Order of Possession effective January 31, 2010. The landlords were awarded the filing fee. Both parties must comply with the Act with respect to the landlords gaining access to the rental unit for the purposes of showing the rental unit to prospective tenants.

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 20, 2010.

Dispute Resolution Officer