



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

INTERIM DECISION

Dispute Codes CNL, MNR, MNDC, OLC, RP, PSF, RR, FF

Introduction

This hearing dealt with the occupant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order for emergency repairs and renovations; an order to have the landlord comply with the *Residential Tenancy Act* (Act), regulation or tenancy agreement; to have the landlord make repairs; provide services or facilities required by law; to allow a rent reduction for repairs, services, or facilities agreed upon but not provided.

The hearing was conducted in person in Hearing Room 1 at 3350 Douglas Street in Victoria, British Columbia and was attended by the applicant and both respondents.

While the application deals with a number of issues there was insufficient time in this hearing to hear all matters. This interim decision focuses primarily on the matters of jurisdiction and the notice to end tenancy; the other noted issues have been adjourned to be heard on April 5, 2011.

I note here that the respondent verbally requested an order of possession should the applicant be unsuccessful in her application to cancel the notice to end tenancy.

The Residential Tenancy Branch Rules of Procedure provide deadlines for the submission of evidence prior to the hearing and guidance for a Dispute Resolution Officer (DRO) to consider when determining whether to allow late evidence.

The Rules state that a DRO must consider if the evidence is relevant; if there has been a deliberate and wilful failure to comply; if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

Upon review of the evidence submitted late by both parties, I find the evidence by both parties to be relevant to the matters under dispute. I do not find a deliberate or wilful failure to comply with the Rules of Procedure or that acceptance of the evidence would prejudice either party and I will allow all evidence as submitted by both parties.

As part of this matter has been adjourned to April 5, 2011 I note here that I will accept any additional evidence the parties wish to submit relating to the matters to be heard at that hearing no later than March 28, 2011 in accordance with the Rules, with no exceptions.

I also caution the parties that I will not accept or consider any additional evidence that is related to the matters that are addressed in this interim decision, specifically jurisdiction and the notice to end tenancy.

Issue(s) to be Decided

Initially, it must be determined if the agreement between applicant and respondents constitutes a tenancy agreement subject to the *Act* and whether or not the Director has jurisdiction over the dispute between these two parties.

The next issue to be decided is whether the applicant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Act*.

And finally, it must be decided, if the respondents are entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The parties agree the applicant moved into the rental unit on or before December 1, 2008; that the rent at the start of the tenancy was \$1,600.00 and the current monthly rent is \$1,200.00 and is due on the 1st of each month; and that no security deposit was required by or provided to the respondents.

The respondent asserts that the parties had a loose or informal arrangement and that there was no specific fixed term agreed upon. The respondent confirmed that they did have discussions with the applicant regarding their plans to build another house on the property and that their intention was to not move onto the property until this new house was built.

The respondent states that they also had conversations with the applicant regarding the possibility of having the tenant purchase the house (building only – not including land) to have it removed at some point in the future, but that no formal agreement was ever reached.

The applicant asserts that the parties had a verbal tenancy agreement that included a fixed term for the tenancy that would end upon completion of construction of the respondents' new house on the property, likely 2 to 3 years from the start of the tenancy. The applicant states that the agreement included the provision that title of the house would be transferred to her at the end of the tenancy.

While the applicant has submitted several letters from witnesses attesting to their understanding of the arrangement the applicant states she has with the respondents she relies primarily on a letter dated November 25, 2008 from the landlord as the basis of her understanding of the agreement.

In this letter the respondents provide some clarity on issues relating to renovations; some background on the reasons why the respondents accepted the applicant to live in the unit. It states the respondents had intended the rent to be \$1,800.00 – it does not state what amount of rent was agreed upon, other than noting that the respondents were willing to accommodate the applicant with a monthly rent she could afford.

The letter goes on to discuss the removal and repair of a specific wall in the bedroom and that the landlord's agreed to pay for the drywall only for this work. It also states the respondents "feel we are being more than fair as we fully expect to transfer ownership of this house to you at a later date. Our original thought was to move into the house ourselves while we build behind but decided that was too hard on you so we will rent elsewhere when the time comes."

The letter closes by stating the respondents are not prepared to do anymore electrical work or other renovations and that the tenant should pay for whatever changes she wishes to make.

The respondents assert that their statement that they "fully expect to transfer ownership of this house to you at a later date" only meant that they had an expectation that this would occur but that they had not entered into any agreement to make this happen.

In August of 2010, the male respondent lost his job and as such the respondents had to reassess their needs and determined in the autumn of 2010 that they would need to move into the rental unit and on February 11, 2011 the respondents issued a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of April 30, 2011, citing the landlords intend to move into the residential property.

The applicant contends that the respondents cannot end the tenancy for the purpose of landlord's use as the tenancy agreement is for a fixed term as defined by the tenant as after the completion of the newly built house on the residential property.

Analysis

In the case of verbal agreements, I note where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

A tenancy is defined in Section 1 of the *Act* as "a tenant's right to possession of a rental unit under a tenancy agreement". A tenancy agreement is also defined in this section as an agreement (written or oral) between a landlord and a tenant respecting possession of a rental unit and includes a license to occupy.

Rent is defined as money paid or agreed to be paid by a tenant to a landlord for the right to possess a rental unit, for the use of common areas and for services and

facilities. Neither party noted that any other amounts of money were paid by the tenant other than rent.

As a result, I find the relationship between these two parties to be that of a landlord and tenant and despite having no written tenancy agreement I find the parties had entered into a tenancy agreement in late 2008. I further find any additional agreement made between the parties, specifically relating to the ownership of the building (house) is not a component of the overall tenancy agreement and therefore I accept jurisdiction on the matters brought before me in the tenant's application.

A fixed term tenancy is defined in Section 1 of the *Act* as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. I accept the landlord's position that no specific end date to the tenancy was determined.

Despite, the tenant's assertion that the letter dated November 25, 2008 from the landlord confirms the fixed term, I find no statement in that letter to commits to renting the rental unit to the tenant for a period of 2 or 3 years or for the duration of the landlords' construction period.

Other than in one case, the letters from friends submitted by the tenant are based on those friends recollection of what they were told by the tenant and none of them have firsthand knowledge of the eventual agreement made between these two parties.

In the letter submitted by the tenant from the person who states he was there when the parties negotiated the writer states: "It was also agreed that the rent would be \$1,600.00 until [the landlords] had built their new house in two years time from the time they commenced building."

I find this statement to be ambiguous, at best, in that it does *not* speak to a specific term of the tenancy but rather that it speaks to how much the monthly rent will be for a specified time period, based on certain events. As a result, I find the statement to be unreliable for the purposes of determining if a fixed term existed.

Even if I were to accept the tenant's position, the *Act* requires a specified end date when determining the duration of the fixed term. By its very name, the term is fixed to a specific time period and not to events that may or may not occur on a specified date, such as the completion of house construction, unless that specific date is known and used as the end date of the fixed term.

For the reasons noted above, I find the tenancy agreement between these parties was periodic in nature based on periods of 1 month and that the tenancy is not a fixed term as defined under the *Act*.

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to occupy the rental unit by giving a notice to end the tenancy effective on a date that must be: not earlier than 2 months after the date the tenant receives the notice; the

day before the day in the month that rent is payable under the tenancy agreement, and if the tenancy agreement is a fixed term tenancy agreement, not earlier than the dated specified as the end of the tenancy.

As the tenant provided no arguments questioning the landlords' intention to move into the rental unit, I find the landlords intend, in good faith, to move into the rental unit. As I have found the tenancy to be periodic in nature and not that of a fixed term, I also find the notice issued by the landlord was provided to the tenant in accordance with the requirements for a 2 month notice with an effective date to be in compliance with the *Act*.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **April 30, 2011 after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court 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*.

Dated: March 17, 2011.

Residential Tenancy Branch