



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: CNC, OLC, OPT

Introduction

This hearing dealt with an application by the tenant for cancellation of a notice to end tenancy for cause / an order instructing the landlord to comply with the Act, regulation or tenancy agreement / and an order of possession for the unit. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a copy of the written tenancy agreement which is before me in evidence, the term of tenancy is shown, in summary, as follows:

This tenancy starts on 1/11/10 (dd/mm/yyyy) for a fixed length of time: 5 months ending on 31/5/11 (dd/mm/yyyy).

At the end of this length of time:

(c) the tenancy ends and the tenant must move out of the residential premises.

Clearly, if one relies solely on the start and end dates shown above, the tenancy is for a fixed term of 7 months, not 5 as is shown. The landlord's agent takes the position that this discrepancy reflects an administrative / clerical error, and that the landlord's tenancies are typically for fixed terms of 5 months. While there is no other documentary evidence before me in this regard, the landlord's agent states that other documentation exists which verifies the agreement between the parties for a 5 month fixed term of tenancy, not 7.

The circumstances which give rise to the dispute are set out in an undated letter from the landlord to the tenant in which the landlord states that the "Fixed Term Tenancy Agreement will not be renewed. Your tenancy with BC Housing will end on March 31,

2011.” Reasons for the landlord’s position are also set out in the letter; these reasons centre around allegations about “completely unacceptable” behavior on the part of the tenant’s guests. The landlord argues that as the tenancy actually expired on March 31, 2011, by continuing to reside in the unit, the tenant is in breach of the tenancy agreement.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca In particular, section 44 of the Act speaks to **How a tenancy ends**.

Based on the documentary evidence and testimony of the parties, I find that the landlord has not issued a 1 month notice to end tenancy for cause. Neither has the landlord filed an application for dispute resolution in which it seeks an order of possession. In the result, the tenant’s application for cancellation of a notice to end tenancy for cause is hereby dismissed.

Following from all of the above, the tenant continues to reside in the unit. The tenant’s application for an order of possession is hereby dismissed, however, for the present time the tenancy carries on in full force and effect.

A definitive end date of tenancy may be achieved by way of a formal mutual agreement between the parties, or by way of the landlord’s issuance of a 1 month notice to end tenancy for cause / application for order of possession, or by way of the landlord’s application for an early end of tenancy / order of possession, or by way of the landlord’s application for an order of possession consistent with the documented end date of tenancy (whether it be found to be March 31 or May 31, 2011).

Conclusion

While the tenant’s application is hereby dismissed, the tenancy presently continues uninterrupted.

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*.

DATE: April 11, 2011

Residential Tenancy Branch