



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding. The Tenants applied for an Order allowing the tenancy continue.

The Landlord, D.L., said that on September 1, 2011 he served the Tenants, with copies of the Application, Notice of Hearing and evidence package by serving them on the Tenant, M.G., in person. D.L. said that at the same time he received the Tenants' hearing packages on his own behalf as well as on behalf of the corporate Landlord which is owned by his father. D.L. said he is authorized to act as an agent on behalf of the corporate Landlord in this matter. The Tenants admitted that they had not served the Landlords with a document from their evidence package, namely a copy of a 2nd tenancy agreement they claim the Parties signed on or about September 7, 2011.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on September 1, 2010 and expired on August 31, 2011. The Parties executed a tenancy agreement on August 16, 2010 which contains the following term:

"3. Term: The tenancy shall be for a fixed length of time. The term of the lease hereby granted and the right of the Tenant to occupy the Premises shall be from and including Sept. 1st 2010 to and including Aug. 31st, 2011 (twelve noon). At this time the tenancy ends and the Tenant shall vacate the premises on that date. Tenant initials _____ Landlord _____"

The Parties agree that on August 16, 2010, the Landlord, D.L. and the Tenant M.G. signed the tenancy agreement and initialled the above-noted term. The Tenant, L.K., was not present on that date so M.G. signed the agreement on his own behalf and on L.K.'s behalf. The Tenants claim that approximately a week after they moved in, the Landlord asked them to sign another copy of the same agreement. L.K. said she

asked the Landlord about the term requiring the Tenants to move out at the end of the fixed term because she was under a lot of psychological stress from the recent death of her daughter and wanted the stability of a longer term tenancy. Consequently, L.K. said she and M.G. discussed this term with the Landlord who told her and M.G. that they should not be concerned because the only time he did not renew a lease was when "he hated the tenants." L.K. said she still had concerns about this clause and in particular the "vague" criteria the Landlords might use when deciding to renew the tenancy or not and when she would get notice if it was to be renewed so she did not initial that line. M.G., however did initial that term but on the line for the Landlord. M.G. said he did not realize that his initials were with respect to that term.

The Landlord denied that he executed a 2nd tenancy agreement with the Tenants. The Landlord argued that it was irrelevant if the Tenants initialled clause 3 or not because the tenancy agreement required the Tenants to move out and did not provide for any other option for the tenancy to continue beyond the end of the fixed term. The Landlord said the only reason he inserted lines for the Parties' initials after this term was to emphasize it. The Landlord said the Tenants did not strike out this clause and signed their agreement to the whole of the tenancy agreement when they executed the last page.

The Parties agree that on August 2, 2011, the Tenants met with the Landlord, D.L. to find out if he would be renewing the tenancy agreement. The Tenant, M.G., claimed that the Landlord, D.L., told them that he would be renewing the lease and would bring a new tenancy agreement to their residence the following day for them to sign, that the rent would be \$10.00 more per month that he would pick up post-dated cheques from them at that time. The Tenant, L.K., claimed however that the Landlord only said the rent would be going up but did not say anything about renewing the lease at that time. The Landlord denied that he told the Tenants he would be renewing the lease at that time and said instead that he told the Tenants he would discuss it with his father. On August 3, 2011, the Landlord gave the Tenants a letter advising them that he would not be renewing their lease for various reasons.

Consequently, the Tenants argued that the term of the tenancy agreement that required them to vacate at the end of the fixed term was of no force and effect because L.K. did not initial the term and M.G. put his initials on the wrong line on the 2nd copy of the tenancy agreement. The Tenants admitted, however, that they were aware that the tenancy would end at the expiry of the fixed term unless the Landlord renewed it, but they argued that the Landlord misled them by telling them that he would likely renew the agreement and then acted in bad faith by not renewing it.

The Landlord argued that there was only one copy of the tenancy agreement and that the Tenants agreed to vacate the rental unit at the end of the fixed term. The Landlord said the Tenants were aware of this term and that he did not act in bad faith by not renewing the tenancy agreement but said instead had to make a "business decision."

Analysis

Section 55(2)(c) of the Act says that a Landlord may request an Order of Possession of a rental unit if “the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.”

The Landlord argued that there was only one tenancy agreement executed by the Parties and that they agreed that the tenancy would end at the end of the fixed term. The Tenants argued that a 2nd copy of the same tenancy agreement was executed by the Parties approximately 3 weeks later and that they did not agree to the term that required them to vacate at the end of the fixed term. The Tenants also argued that they were misled by the Landlord to believe that the tenancy agreement would be renewed.

The Tenants admitted that they did not provide the Landlord with a copy of the alleged 2nd tenancy agreement upon which they rely at the hearing because they believed he already had a copy. I find on a balance of probabilities that there probably was a 2nd tenancy agreement signed by both of the Tenants and the Landlord, D.L., on or about September 7, 2011. I did not find the Landlord’s evidence on this issue to be credible. For example, although D.L. denied that this document existed, he did not deny having a conversation with both of the Tenants about this term at a later date as they claimed.

However, even if I accept the Tenants’ evidence that the 2nd tenancy agreement rendered the 1st agreement of no force and effect, I still find that the Parties agreed that the tenancy would end on the last day of the fixed term. The Tenants admitted that they were aware of what clause 3 meant, had concerns about it and therefore discussed it with the Landlord. Although M.G. said he was unaware that he was agreeing to this term when he signed his initials, I find that this contradicts his earlier evidence that both he and L.K. were present at the same time when they discussed the term with the Landlord and at that time L.K. decided not to sign it. Consequently, I conclude that M.G. did initial that clause knowing the effect it would have. I find it irrelevant that M.G. put his initials on the line indicated for the Landlord.

I also agree with the Landlord that there appears to be no other purpose to having the Tenants initial this clause other than to bring it to their attention. If the Tenants did not agree to this term, they would have had to strike it out. Instead, by signing the tenancy agreement without any alterations, I find that the Tenants agreed to the contents of the tenancy agreement as a whole. Consequently, I conclude that whether there was only one tenancy agreement as the Landlord claimed or two as the Tenants claimed, the effect would be the same because the Parties signed the last page on both documents without making any alterations to the body of the tenancy agreement by deleting the term they say they did not agree to. Furthermore, the Tenants admitted that they approached the Landlord on August 2, 2011 because they knew the lease was going to expire and they were unsure if the Landlord intended to renew it or not.

I also find that there is no merit to the Tenants' argument that the tenancy should not end because the Landlord led them to believe that he would renew the tenancy agreement at the end of the fixed term. No one can know in advance if a tenancy will work out for both parties. Consequently, there could be no guarantee to the Tenants that the Landlord would renew the tenancy agreement (unless there was a clause in the tenancy agreement requiring the Landlord to renew it). The Tenants also admitted that they had misgivings about leaving it to the Landlord's discretion as to whether he would renew the tenancy agreement or not.

For all of the above-noted reasons, I find that it was a term of the Parties' tenancy agreement (both in the first copy and the 2nd copy) that the tenancy would end at the end of the fixed term and that the Tenants would vacate at that time. I find that the Tenants were aware of the implications of this term and agreed to it (albeit reluctantly). Consequently, I find that the Landlords are entitled pursuant to s. 55(2)(c) of the Act to an Order of Possession to take effect two days after service of it on the Tenants. As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee they paid for this proceeding.

Conclusion

The Tenants' application for an Order that the tenancy continue is dismissed without leave to reapply. An Order of Possession to take effect 2 days after service of it on the Tenants and Monetary Order in the amount of \$50.00 has been issued to the Landlords. A copy of the Orders must be served on the Tenants; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: September 27, 2011.

Residential Tenancy Branch