



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking an order for the Landlord to comply with the Act and tenancy agreement, for other relief, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note the Tenants had named legal counsel for the Landlord as a respondent in this matter. With the consent of the parties, I have amended the style of cause to not include the name of legal counsel.

Issue(s) to be Decided

Should the Landlord be ordered to comply with the Act?

Background and Evidence

In late August of 2011 the Landlord and the Tenants exchanged email correspondence regarding the rental unit. The Landlord was leaving the country and wanted someone to look after her condominium. The Tenants were interested in renting the subject rental unit.

In correspondence, the Landlord asked the Tenants if they wanted the rental unit furnished or unfurnished, and stipulated other terms, such as no pets or smoking in the rental unit. At the end of one email the Landlord asks the Tenants, "We'd have to write up some kind of legal document hey?" [Reproduced as written.]

The Tenants replied that they have done this before and were currently living in this type of situation. The male Tenant proposed the following to the Landlord:

“Basically I sign a lease from you saying I can sublet the condo, and you put whatever stipulations you require in it. No pets/no smoking is not a problem. Whats the minimum time you would be gone, Or is it totally up in the air? Ideally I would like to get renters to sign a 1 year lease, but I could put something in there about me being able to end it if you come back, etc...” [Reproduced as written.]

The Landlord replies,

“Great. I am happy to have you sublet my place for \$1,000.00 a month. I would prefer to have the lease be for a minimum of 6 months and then on a month to month basis...”

The Landlord and the Tenants then enter into a “Residential Condominium Suite Agreement” (the “Agreement”).

The Agreement identifies the parties as a landlord and tenants. The Agreement includes, but is not limited to, terms requiring the Tenants to pay the monthly rent to the Landlord, pay a security deposit, a \$25.00 fee for late payment of rents, and allows the Tenants to sublet the rental unit.

The term of the Agreement is from October 1, 2011, to April 1, 2012, and at the end of the term the tenancy continues on a month to month basis. I note there are termination provisions in the Agreement which are contrary to the provisions in Part 4 of the Act, which sets out the only methods by which a tenancy may end in British Columbia. I also note section 4 of the Act prohibits the parties from contracting outside of the Act.

After the Landlord and the Tenants signed the Agreement, the Tenants sublet the rental unit to a third party under a different written tenancy agreement. The Tenants sublet the rental unit to the third party at a higher rate of rent than what the Tenants were required to pay to the Landlord under the Agreement.

Sometime in early February of 2012, the parties had a telephone conversation. On February 5, 2012, the Landlord emailed the Tenants and informed them that (pursuant to the phone conversation), the Landlord does not wish to continue with the Agreement past the April 1, 2012 date.

The Tenants reply that the Landlord must end the tenancy in writing, with a Notice to End Tenancy from the Residential Tenancy Branch.

The Landlord replies and states, “Are you sure about this [male Tenant]? You are not actually a tenant, but a property manager. I thought you and I agreed you would gladly turn it over after six months.” [Reproduced as written.] The Landlord then explains to the Tenants she will get a lawyer to look at the contract. The parties then exchange several more emails, in which they discuss the amounts being charged for the rental unit and the Landlord’s costs of owning the rental unit.

The Landlord’s position is that the Tenants were her property managers. The Landlord submits that the Tenants never occupied the rental unit and therefore, they were not tenants as contemplated under the Act. The Landlord sets out in an email that she is terminating the property management agreement between her and the Tenants. The Landlord wants to take over the renters who are occupying the rental unit from the Tenants.

The Landlord’s legal counsel wrote a letter to the Tenants and explained the position of the Landlord; that the Agreement was meant to have the Tenants find renters for the rental unit and act as an agent for the Landlord. Legal counsel interprets the Agreement as a property management agreement.

Legal counsel for the Landlord cites the Provincial Court case of *McConnell v. Whistler Slopeside Accom. Inc.*, 2007 BCPC 0444; File 07-18682 of the North Vancouver Registry, in support of their position. Counsel argues that this case stand for the proposition that the Tenants were acting as the agents for the Landlord regardless of what they called themselves in the Agreement.

The Tenants’ position is that they were helping the Landlord by taking over the rental of the rental unit. The Tenants submit that they were allowed to sublet the rental unit under the terms of the Agreement. The Tenants submit that the Landlord simply wants to take over the renters who are in the rental unit who are paying more rent than the Tenants, after the Tenants took the risk of renting from the Landlord. The Tenants also stated that at the outset of the dispute they were willing to settle this matter amicably with the Landlord, however, due to the threatening manner of the Landlord and legal counsel they have now chosen to adhere to the Act and the Agreement.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlord and the Tenants established a tenancy relationship with the Agreement.

I find the case of *McConnell v. Whistler Slopeside Accom. Inc.* (cited above) may be distinguished from the facts here. In the cited case, the claimant agreed to pay the property management company a fee of 20% of the rent to arrange for a tenant for the rental unit. The defendant was in the business of acting as a rental agent in a resort area. The defendant entered into a tenancy agreement on behalf of the claimant and contracted with the renter's employer for the use of the rental unit as a tenant.

I do not find these facts apply to the case before me since in the present case, the Tenants personally signed the Agreement with the Landlord. The Landlord has no contractual rights with the renters of the rental unit, only with the Tenants. At all times the Tenants were personally liable to the Landlord under the terms of this Agreement to pay the rent to the Landlord and abide by its terms (which were not contrary to the Act). There are no terms in the Agreement which hold the Tenants are acting as agents or property managers for the Landlord.

I also find there is no documentary evidence before me which would support the parties did not intend on entering into a tenancy relationship. There are no terms in the Agreement with respect to forming a principle and agent relationship. I note that while the Landlord testified that this is what she intended and thought she had signed the Agreement for, I find the writing of the Agreement is clear and not misleading. It would stretch reasonable interpretation to an unacceptable level to find the Agreement is anything but a tenancy agreement, upon a reading of its terms.

It is certainly not open to the Landlord to now try and change the nature of the written Agreement with parol evidence.

I also do not accept the Landlord's argument that the Tenants never intended on occupying the rental unit and this should indicate they were agents or managers acting on her behalf. I note it was a term of the Agreement (paragraph 15) that the Tenants could sublet the rental unit and the parties discussed this at the outset of the negotiations. More importantly, section 16 of the Act provides that the rights and obligations of the parties take effect from the date the Agreement was signed, whether or not the Tenants ever occupied the rental unit.

In other words, the Tenants did not have to occupy the rental unit in order to be bound by the terms and conditions of the Agreement.

If the Tenants were unable to sublet the rental unit to a third party they would have been responsible to the Landlord to continue to pay the rent to the Landlord, even if they were not occupying the rental unit. Furthermore, the Tenants continue to be responsible to the Landlord for the condition of the rental unit even when they do not occupy it.

For these reasons I find the parties established a tenancy agreement.

Therefore, I allow the Application of the Tenants and **I order the Landlord to comply with the Act and the tenancy Agreement.** This tenancy may not end unless done so in accordance with the Act, which includes provisions that the parties may reach a mutual agreement to end the tenancy.

As the Tenants have been successful in their Application, I allow them their filing fee and order the Landlord to pay the Tenants the sum of \$50.00. I grant and issue the Tenants an order in those terms, which must be served on the Landlord, and may be enforced in Provincial Court.

Conclusion

The parties entered into a tenancy agreement. The Landlord must comply with the terms of the tenancy Agreement and the Act. The tenancy must be ended in accordance with the Act which might include a mutual agreement between the parties.

This decision is final and binding on the parties, except as provided for under the Act, and 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: April 11, 2012.

Residential Tenancy Branch