



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PAL Vancouver
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, O

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The tenant initially applied for more time to submit an application to cancel a Notice to End Tenancy, to recover his filing fee from the landlord pursuant to section 72 of the *Act*, and for other remedies. As no Notice to End Tenancy had been issued by the landlord for this tenancy, the tenant amended his original application by cancelling his request for more time to cancel a Notice to End Tenancy. In an addendum to the Details of the Dispute section of his application for dispute resolution, the tenant outlined his application in part as follows:

...The (tenancy) agreement doesn't state that tenant will vacate the premises on the date of the lease expiry of the lease. The tenant is willing to renew the new lease. He missed the last day (Feb 28/2013) to sign the new lease agreement for medical reasons...

The landlords also applied for an “other remedy”, which they described as an application for an end to this tenancy on the basis that the tenant had not signed a new tenancy agreement by February 28, 2013, the last date identified in the tenancy agreement for doing so. At the hearing, the landlord confirmed that he was seeking an end to this tenancy and an Order of Possession.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male landlord (the landlord) confirmed that on March 11, 2013, the tenant handed one of the landlords' representatives a copy of the tenant's dispute resolution hearing package. The tenant confirmed that on March 13, 2013, he received a copy of the landlords' dispute resolution hearing package left on the front of his door. I am satisfied that the parties served one another with their respective hearing packages and their written evidence packages in accordance with the *Act*.

As both applicants relied on the “other remedies” category to describe their objectives in initiating applications for dispute resolution, I find both written applications somewhat vague. However, I am satisfied that both parties understood in advance of this hearing that the point in contention was whether or not the tenancy was to end on February 28, 2013, due to the tenant’s failure to sign a new residential tenancy agreement before the existing agreement expired. I am satisfied that the landlords were aware that the tenant was seeking an order that the tenancy should not have ended on February 28, 2013, as the tenant encountered medical problems that prevented him from signing a new tenancy agreement that day. I am also satisfied that the tenant was aware that the landlord was seeking an end to this tenancy on the basis of the tenant’s failure to sign a new tenancy agreement before March 1, 2013.

Issues(s) to be Decided

Has the tenant provided sufficient evidence to demonstrate that the residential tenancy agreement should be allowed to continue beyond February 28, 2013. If not, has this tenancy ended and should the landlords be granted an Order of Possession.

Background and Evidence

The parties agreed that this tenancy for a subsidized housing unit began in June 2006, by way of a series of fixed term tenancy agreements. The landlord entered into written evidence a copy of the most recent signed Residential Tenancy Agreement (the Agreement) signed by both parties on February 8, 2012. This most recent Agreement covered the period from March 1, 2012 until February 28, 2013. Section 3.(c)(2) of the Agreement stated that “at the end of the fixed length of time, the tenancy ends and the Tenant will vacate the Rental Unit on the Ending Date.” In order to be of force, this section of the Agreement noted that **“BOTH THE LANDLORD AND THE TENANT MUST INITIAL IN THE BOXES TO THE RIGHT.”** Both of these boxes were initialled by both the landlord and the tenant. Section 4 of the Agreement noted that the market rent for the rental unit was set at \$1,700.00, of which the landlord subsidized \$946.00 and the tenant contributed \$754.00. Section 4(f) of the Agreement noted that “the Tenant may make fresh applications for Financial Assistance for subsequent fixed term Residential Tenancy Agreements.”

The landlords’ representatives entered undisputed written evidence and sworn testimony that they provided the tenant repeated opportunities, mostly through written requests commencing on January 21, 2013, to enter into a new Agreement to cover the period commencing on March 1, 2013. The landlords’ representatives testified that the tenant informed them that he was trying to have the amount of the landlord’s requested monthly rent reduced. Once he discovered that his tenancy was not covered under the rent increase provisions of the Act, he informed the landlord’s female representative at

this hearing that he was trying to obtain an opinion from a legal advocate to determine his options with respect to this tenancy. The landlords testified that the tenant has asked for a reduction in rent most years near the end of his tenancy, and the landlord's board of directors considered but rejected the tenant's request this year. The landlord testified that he obtained an Order of Possession for this tenancy in 2011, but the landlords agreed to give the tenant another chance and chose not to use that Order of Possession. Based on the ongoing issues with the tenant, including one in which the tenant was allegedly wielding a baton in a threatening way, the landlords are no longer interested in entering into a new tenancy with this tenant.

The tenant gave sworn oral testimony and written evidence that he had to spend all of February 28, 2013 at the hospital because of "pain, confusion and numbness". Consequently, he maintained that he was unable to sign a new Agreement that day, the last day that he could do so in accordance with the existing Agreement.

Although he did not provide a copy of anything from any health care professional to support his claim that he was medically unable to sign a new Agreement on February 28, 2013, the landlord said that the tenant provided him with a copy of two documents to this effect. As these were the only documents relating to the tenant's claim that his medical problems prevented him from signing a new Agreement, I asked the landlord to fax me a copy of the letter that the tenant had provided to him before the end of the hearing day. Before the end of that day, both the landlord and the tenant faxed me copies of the two letters they referred to in the hearing with respect to the tenant's medical issues.

Analysis

Section 55(2)(c) of the *Act* reads in part as follows:

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:...*

(c) 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;...

Contrary to the written evidence submitted as part of the Details of the Dispute in the tenant's application for dispute resolution, I find that both parties initialled that the Agreement was to end on the final day of the Agreement, February 28, 2013. I also accept the landlord's undisputed sworn testimony that the tenant was well aware that he

needed to sign a new Agreement before the existing tenancy ended, as this had been the situation throughout the tenant's almost seven year tenancy in this rental building.

In considering the tenant's claim that he could not sign a new Agreement on February 28, 2013, the last day of his existing Agreement, I have taken into account the landlord's undisputed evidence regarding the efforts the landlords took to try to obtain a new signed Agreement with the tenant. I find that the landlord made repeated oral and written requests to the tenant to sign a new Agreement before the existing Agreement ended. Rather than sign a new Agreement as requested or make an appointment to do so, the tenant delayed taking action to attend to this matter until the last possible day, February 28, 2013.

I have also reviewed the documents submitted with respect to the tenant's health problems on February 28, 2013. Although there are references to the tenant's self-reporting that he suffered a mild stroke and possible heart attack on February 28, 2013, I find that the tenant has not submitted any original source document from health care professionals to confirm that any of the health care professionals who treated the tenant that day reached a similar diagnosis. The only note from a health care professional was from the tenant's doctor who confirmed that he saw the tenant on February 26, 2013 for "sudden onset right leg weakness." In this note, the tenant's doctor confirmed that he asked the tenant to go to the emergency department at the local hospital. The note adds that the tenant "mentioned that he went to (the hospital) on 28th." From the note from the tenant's doctor, it appears that the tenant delayed attending the local hospital for two days after he was advised to do so by his doctor, until the last day of his Agreement.

Under these circumstances and based on such minimal actual medical evidence, I find little reason to accept the tenant's claim that he was prevented from signing a new Agreement because of health problems on February 28, 2013. I find that the tenant was given ample warning by the landlord that he needed to sign a new Agreement before the expiration of the existing Agreement, and took no action to do so until the last possible day.

After considering all factors associated with this tenancy and the tenant's request for an extension of time to complete a new Agreement, I find that this tenancy ended on February 28, 2013 pursuant to section 55(2)(c) of the *Act*. This was the date clearly identified and initialled on February 8, 2012, by both the landlord and the tenant as the end date for this tenancy.

The landlords have accepted a \$879.00 payment from the tenant on March 4, 2013 for use and occupation only, as set out in the landlord's written receipt entered into evidence. I find that the landlords have not extended this tenancy by accepting the tenant's payment for use and occupancy only.

As I find that the tenancy ended on February 28, 2013, I issue the landlord an Order of Possession to take effect by 1:00 p.m. on April 30, 2013.

Conclusion

I dismiss the tenant's application and find that this tenancy ended on February 28, 2013, in accordance with the Agreement. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on April 30, 2013. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme 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: April 02, 2013

Residential Tenancy Branch