



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOBLAWS PROPERTY WEST INC.
and [tenant name suppressed to protect privacy]

Final Decision

Dispute Codes:

OPC, CNLC, CNL, OPL, O, FF

Introduction

This hearing originally was convened to deal with an application submitted by the tenant, seeking to cancel a One-Month Notice to End Tenancy for Cause dated May 31, 2013 and effective July 31, 2013.

The tenant's application had also indicated that the tenant was disputing a Notice to end tenancy for "*Landlord's Intention to convert the manufactured home park to another use*". However, it was established that the tenant made an error and the application was amended to eliminate this request.

At the initial hearing on August 19, 2013, it was revealed that, after the tenant had already made the application to dispute the One-Month Notice to End Tenancy for Cause, dated May 31, 2013, the landlord had subsequently issued a Two Month Notice to End Tenancy for Landlord's Use and served it on the tenant on June 12, 2013.

Therefore, it was decided during the initial hearing that the matter would be adjourned to permit the tenant to amend his application to dispute the landlord's subsequent Two Month Notice to End Tenancy for Landlord's Use and so that the tenant could submit evidence relevant to that Notice.

On September 6, 2013, the landlord then submitted a cross application requesting an Order of Possession based on their subsequent Two Month Notice to End Tenancy for Landlord's Use dated June 12, 2013, effective August 31, 2013. The landlord's application was joined with the tenant's reconvened amended application and both applications were heard together today, on October 7, 2013.

On September 9, 2013, the tenant amended his application further to seek monetary compensation in the amount of \$238,000.00.

Both parties were present at the initial hearing held on August 19, 2013 and today's hearing held on October 7, 2013.

At the start of each of the hearings I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Issues

Tenant's Amendment to Add a Monetary Claim

On September 9, 2013, the tenant amended their application to add a monetary claim of \$238,000.00 against the landlord. The tenant stated that he is aware that the amount requested exceeds the \$25,000.00 monetary limit that can be determined under the Residential Tenancy Act.

The tenant testified that he is claiming \$38,000.00 for the value of the house, which the tenant claims the landlord gave him and \$200,000.00 for the tenant's labour during the tenancy.

The landlord denied that they were ever served with the tenant's amended application.

However, I find that even if the tenant and landlord had some form of agreement for the tenant to do labour on the property, such as renovations or improvements in exchange for pay or rent credit, then this is not part of the tenancy.

Section 62 of the Act only gives the dispute resolution officer authority to determine

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under the Act or a tenancy agreement.

Section 1 of the Act, defines "*tenancy agreement*" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

In situations where a landlord and tenant enter into an ancillary agreement for an exchange of labour for compensation or credit towards the payment of rent, I find that this appears to be some form of a contract of employment. Although associated with the tenancy, I find that a contract of this nature cannot be considered as a valid part of the tenancy agreement that is governed under the Act, because it places the parties outside of their roles as landlord and as tenant. In addition to the contractual differences, employment and commerce are governed under different legislation than residential tenancies are and the laws that apply to these other kinds of contracts involve more than just monetary obligations.

Therefore I find that I lack statutory jurisdiction or authority under the Act to determine the reciprocal rights and responsibilities, including compensation owed, pertaining to separate contractual agreements, other than a genuine tenancy agreement.

I find that I cannot take into consideration any factors relating to the work arrangement between these parties nor determine any disputes that arise from these. I find that these other alleged contractual violations would need to be dealt with in some other judicial forum.

Accordingly, I decline to permit the tenant to amend the application for Dispute Resolution under the Residential Tenancy Act to add the \$238,000 monetary claim for alleged debts that I have determined apparently fall under a work agreement or some other type of contract.

Original Tenancy Agreement Or New “Non-Tenancy” Contract

As a preliminary matter, the tenant argued that the current contract between the tenant and the landlord does not pertain to a tenancy relationship covered by the Residential Tenancy Act. The tenant testified that, although he had originally entered into a written tenancy agreement with the previous owner, agreeing to rent the home for \$600.00 per month, this relationship was later converted from a tenancy agreement to an employer/employee contract. The tenant’s position is that this subsequent contract is not governed by the Residential Tenancy Act and the tenant believes that I therefore would lack jurisdiction to determine the dispute under the Residential Tenancy Act.

The tenant pointed out that, after the new owners took over, he had never paid them the \$600.00 monthly rent specified under the original written contract, but instead performed a variety of labour and management functions with respect to

security, maintenance, repairs and improvements on the property and the building. According to the tenant, he functioned as “*the eyes and ears*” of the landlord and his role was not that of mere tenant.

The tenant further alleged that he was verbally granted ownership of several buildings on the land, which he dismantled over time. The tenant testified that an agent of the landlord had expressly granted him legal ownership of the building in which he is now residing and had told the tenant that he was entitled to remain on the land until it was developed.

The tenant stated that the value of the building he was given is approximately \$38,000.00 and he is also owed another \$200,000.00 from the landlord under a verbal contract for the value of his labour.

The tenant’s position is that the subsequent verbal contract had cancelled and replaced the original tenancy agreement, as evidenced by the landlord’s actions for the past few years since they purchased the property. According to the tenant a tenancy agreement no longer existed between the parties at all given that the original terms for rent were not followed and the previous written agreement was since replaced by a verbal contract with a set of completely different obligations and non-tenancy terms.

However, I find that a written tenancy agreement did exist and a copy of this document was submitted into evidence by the landlord confirming that a valid tenancy relationship had been established in 2002. I find that, once formed, the Act provides that a tenancy would continue unless, and until, this tenancy is officially terminated in accordance with the Act, by either party.

I find that the criteria for ending the tenancy is contained in sections 44 and 45 of the Act. Section 44 of the Act provides how a tenancy ends:

“A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];*
- (ii) section 46 [landlord's notice: non-payment of rent];*
- (iii) section 47 [landlord's notice: cause];*
- (iv) section 48 [landlord's notice: end of employment];*
- (v) section 49 [landlord's notice: landlord's use of property];*
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
- (vii) section 50 [tenant may end tenancy early];*

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms."

Section 45 of the Act also permits the tenant to end a month-to-month tenancy by giving the landlord written notice to end the tenancy effective on a date that:

"(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement."

Section 52 of the Act states that, in order to be effective, a Notice to End a tenancy **must be in writing** and must

"(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form."

In this case I find it clear that the tenancy was never validly terminated under the Act by either party, at any time. The tenant has never ceased residing in the rental unit. I find that, because the tenancy was never officially ended, the original agreement is still in effect and the terms therein may be enforced.

Although I make no finding as to whether or not any additional secondary contracts involving employment or other terms, were ever formed between these two parties, I do find that such contractual agreements, if they exist, would not affect the tenancy nor would they fall under the Residential Tenancy Act as separate entities. Therefore I find that I lack statutory jurisdiction to determine terms of, or enforce of, these other types of contracts. This is the reason, I must decline to hear or consider testimonial evidence with respect to the terms of any other purported contracts.

However, with respect to the tenancy agreement signed in 2002, I find that section 6 of the Act states that rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

I find there is no doubt that a genuine tenancy governed by the Residential Tenancy Act, existed and still does exist. I further find that the resident living on the property meets the definition of a tenant and the party seeking to end the tenancy meets the definition of a landlord, under the Act.

Change of Landlord

As a preliminary matter, the tenant testified that the original tenancy agreement had been invalidated because the first landlord, who originally signed the tenancy agreement, subsequently sold the property to the new owner, who has now issued the Two Month Notice to End Tenancy for Landlord's Use, as the current legal landlord.

I find that the Act states that, in relation to a rental unit, "*landlord*" includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that, under the Act, a new owner automatically becomes the current landlord and is bound by the terms of any existing tenancy agreement. Under the Act, the original agreement survives a sale of the property and cannot be unilaterally altered by either party, regardless of whether there is a change of ownership.

For this reason, I find that the same tenancy agreement established between this tenant and the landlord on the tenant's move-in date was never invalidated by the sale of the property and all of its terms still remain in effect.

Background and Evidence

The landlord testified that they decided to terminate the tenancy as the dwelling will be demolished in preparation for a planned development of the land.

The landlord submitted a copy of the 2-Month indicating that they were terminating the tenancy because:

"The landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

Also submitted into evidence by the landlord were copies of:

- A One-Month Notice to End Tenancy for Cause dated May 31, 2013
- the original tenancy agreement that the tenant had signed with the previous landlord,
- a copy of property registration showing that the landlord is the owner of the rental property,
- a copy of a demolition permit and communication from the municipality confirming that the landlord is permitted to demolish the building,
- photos and aerial surveys of the property, and

- copies of communications.

The landlord is seeking an Order of Possession pursuant to the Two Month Notice to End Tenancy for Landlord's Use.

The tenant disputed the Notice and raised the issue of "*bad faith*" stating that the landlord's 2-Month Notice was issued for another purpose than that being claimed.

The landlord argued that there is no basis for the allegation of bad faith. The landlord testified that it was always their intent to develop the property and it was purchased for that purpose. The landlord testified that they obtained a municipal permit allowing the landlord to proceed with demolition as part of the development of the property. A copy of the permit is in evidence.

The landlord stated that the tenant was fully aware from the outset, that the landlord intended to develop the land. The landlord testified that they had willingly waived collection of the \$600.00 rent under the tenancy agreement and permitted the tenant to reside on site, pending commencement of the development plans. The landlord stated that the initial preparation towards this plan is to demolish the rental unit and there is no bad faith involved in following the existing plan.

Analysis

Section 49(6) of the Act states that a landlord may end a tenancy in respect of a rental unit if the landlord **has all the necessary permits and approvals required by law**, and intends in good faith, to do any of the following:

(a) demolish the rental unit (My emphasis)

As the tenant has raised the issue of bad faith, I find that the burden of proof is now on the landlord to prove that they own the property, that they have obtained all of the necessary permits and approvals required by law, and that they intend in good faith to demolish the rental unit as specified in their Two Month Notice to End Tenancy for Landlord's Use.

I accept the landlord's testimony that there was an existing plan to develop the property and that demolition of the unit is an integral part of this plan. I find as a fact that the landlord did obtain the necessary permits to demolish the rental unit and there is no evidence that this was done for any other motive than to proceed with the planned development of the property.

Accordingly I find that there is insufficient evidence that the Two Month Notice to End Tenancy for Landlord's Use was issued in bad faith or that it should be cancelled.

Based on the evidence before me, I find that the tenant's application has no merit and I hereby dismiss the tenant's application seeking to cancel the Notice.

I hereby grant the landlord an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use. This order must be served on the tenant and may be enforced through an order from the Supreme Court of British Columbia, if necessary.

I decline to consider the tenant's amended application seeking monetary compensation for labour and property, as I find that the claim does not relate to a dispute under the jurisdiction of the Residential Tenancy Act.

Conclusion

The landlord is successful in the application and is granted an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use.

The tenant's amendment to the application, to seek compensation, is found to be outside the jurisdiction of the Residential Tenancy Act and therefore is declined.

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: October 7, 2013

Residential Tenancy Branch