



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee.

The hearing process was explained to the attending named parties and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issues:

Prior to the hearing, both parties through their documentary evidence had raised the issue of jurisdiction as to whether the Residential Tenancy Act applied to this dispute. The parties were advised that I would conduct the hearing by first hearing from the parties on the issue of jurisdiction and then continue on with the tenants' application in the event I found jurisdiction to resolve this dispute.

Thereafter, testimony was taken on the tenants' application.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to resolve this dispute?
2. If so, are the applicants entitled to an order cancelling the 1 Month Notice?

Background and Evidence

Evidence regarding jurisdiction:

There is no dispute that the parties entered into a rent-to-own contract entitled "Agreement for Sale of Land," which notes that the tenants/purchasers agreed to purchase the home and property in question from the landlord/seller, for a set price, and for an occupancy date of October 1, 2010. A purchase price was set, a loan was amortized, and the agreement called for the tenants/purchasers to pay monthly payments of \$1500 beginning on or about March 1, 2011 until February 2014. The agreement also required from the tenants/purchasers a down payment of \$20,000.

The parties both agreed that the rent to own agreement fell apart in the summer of 2013 as the tenants decided they would not purchase the property.

The tenants/purchasers (hereafter "tenants") submitted that on or about July 15, 2013, the parties entered into a new agreement, by virtue of an "Addendum," whereby the parties modified their agreement, which called for the landlord/seller (hereafter "landlord") to refund the down payment to the tenants less \$10,000 owed by the tenants to the landlord, once the property was sold to a third party. The tenants further submitted that the monthly payment was reduced to \$1000 per month, rather than \$1500 per month, and the tenants agreed to remove firewood, unlicensed vehicles and debris to help sell the property.

The tenants further submitted that in August 2013, the parties orally amended the Addendum allowing the landlord full access to the rental property with a 24 hour notice to be able to sell the property prior to February 2014, and in consideration of this agreement, the landlord waived the monthly payments of \$1000 until the \$10,000 had been redeemed. Due to this verbal agreement, the tenants contended they are entitled to remain in the rental property until the end of May 2014, which is 10 months @ \$1000 per month, without paying monthly payments.

In response, the landlord's legal counsel agreed that the Residential Tenancy Act applied to this dispute, in limited fashion, which was dealing with vacant possession of the rental property. The legal counsel submitted that in July 2013, the parties agreed that the tenants would pay \$1000 per month until February 1, 2014, and that the landlord waived the monthly payment in lieu of the tenants allowing full access to the rental property in order to assist in the sale of the property.

The legal counsel submitted that through the Addendum and parties' conduct, the original rent-to-own agreement converted to fixed term tenancy agreement until the expiration of the original term, that being February 1, 2014.

Evidence in support of the landlord's 1 Month Notice-

In support of issuing the tenants a 1 Month Notice to end the tenancy for alleged cause, the landlord served the tenants such Notice on February 17, 2014, by personal delivery, listing March 18, 2014, as an effective move-out date.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, the Notice effective date is automatically changed to March 31, 2014.

The cause listed on the Notice alleged that the tenants have breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

In support of the Notice, the legal counsel submitted that contrary to the parties' agreement, the landlord was denied access to the rental property in January 2014, by the male tenant, violating a material term.

In response, the tenants submitted that the landlord approached him in January 2014, informing him, the tenant, that he was going to sue him and that he wanted access to the property. The tenant further submitted that he misunderstood, believing that the landlord wanted immediate access to the property, and that because the time was 6:30 a.m., and his family was sleeping, he denied access at that particular time, not with 24 hours notice.

The tenant testified and reiterated that they are entitled to remain in the rental unit until the end of May 2014.

In response to my question, the tenants submitted that they never paid any property taxes.

The tenants' relevant documentary evidence included the first page of the 2 page Notice, a 3 page written explanation of the events surrounding this agreement, a copy of the original "Agreement for Sale of Land," a letter from the landlord's legal counsel, a copy of a document which apparently was the Addendum to which both parties referred, and Notice of Claim filed by the tenants in the Provincial Court of British Columbia. I note that the Addendum is not dated or signed by any of the parties and is not entitled "Addendum."

The landlord's relevant documentary evidence included a written submission outlining the landlord's position regarding the tenants' application.

Analysis on Jurisdiction

In order for me to make a decision on the tenants' application seeking cancellation of the landlord's 1 Month Notice, I must first decide whether this dispute is excluded from the jurisdiction of the *Residential Tenancy Act*.

In considering whether or not a tenancy existed, under the Act, a landlord is defined as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord who permits occupation of the rental unit under a tenancy agreement.

Similarly a 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.

Rent is money paid or value given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit.

In the circumstances before me, I find that the landlord was the owner of the home in question at the time he allowed the tenants to occupy and that value was given on behalf of the tenants for the right to possess the rental unit.

Therefore, upon a balance of probabilities, I accept that the parties had entered into a verbal tenancy agreement by August 2013, the rights and obligations of which are enforceable under the Residential Tenancy Act as to the occupation and value given for such occupation.

Analysis on the Tenants' Application

The landlord has the burden of proving on the balance of probabilities that there were sufficient grounds to end this tenancy for the stated cause.

Section 47(1)(h) of the Act authorizes a landlord to end a tenancy by giving proper notice if a tenant has failed to comply with a material term and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so. To determine the materiality term, I must determine the importance of the term in the overall scheme of the tenancy agreement. A material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy.

Section 6(3)(c) of the Act stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In the case before me, I find the evidence supports that the parties entered into an oral tenancy agreement for occupation of the rental property; however, as this agreement was not in written form, as is the landlord's requirement under section 13(1) of the Act, the terms are left open to interpretation by a third party.

In weighing the evidence of both parties, I find that by a preponderance of such evidence that the parties agreed that beginning in August 2013, the tenants were allowed occupation of the rental property, for a monthly rent of \$1000. I further find that the monthly rent was waived by the landlord in return for the tenants assisting in the sale of the rental property by allowing access and that each waived monthly rent payment reduced the amount of the original down payment that the landlord had agreed to repay the tenants, in the amount of \$10,000.

As there is no written tenancy agreement clearly communicating that the parties have entered into a fixed term tenancy, I find that these parties entered into a month-to-month tenancy. I therefore cannot agree that the tenants were required to vacate by the end of February 2014.

Due to the above, I find that the tenants have been paying their monthly rent of \$1000, and that such monthly rent is paid through May 2014, (August 2013-May 2014) at which time the landlord will be deemed to have repaid the balance of the tenants' down payment of \$10,000.

Thereafter the tenants will be obligated to pay \$1000 in monthly rent to the landlord, beginning June 2014.

I further considered whether or not the tenants failed to allow access to the rental property, and as the landlord failed to produce a copy of a written notice to the tenants providing 24 hours notice of his entry to the rental property as required by section 29 of the Act, I find the landlord submitted insufficient evidence that the tenants denied access.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the cause listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated and issued on February 17, 2014, listing an effective move out date of March 18, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Due to their successful application, I also award the tenants recovery of the filing fee of \$50 and I provide the tenants a monetary order in that amount, which may be served upon the landlord and enforced in the Small Claims Division of the Provincial Court of British Columbia if the landlord should fail to pay the tenants this amount.

Conclusion

I grant the tenants' application seeking cancellation of the landlord's 1 Month Notice, and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

The tenants are granted a monetary order in the amount of \$50, representing recovery of their filing fee. Should the tenancy continue through the month of June, the tenants are allowed to deduct \$50 from a monthly rent payment in satisfaction of their monetary award.

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: March 17, 2014

Residential Tenancy Branch

