



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for landlord's use of property and to recover the filing fee from the landlords for the cost of the application.

Both tenants and one of the landlords attended the hearing and all parties gave affirmed testimony. The tenants also provided evidentiary material to the Residential Tenancy Branch and to the landlords prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled due to an oral agreement to extend the fixed term of the tenancy?

Background and Evidence

The landlord testified that this tenancy began as a fixed term tenancy on March 1, 2013 and expired on February 28, 2014. Thereafter, the tenancy became a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$1,600.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlords. The named landlords are spouses, and the named tenants are spouses.

The landlord further testified that the landlords reside in a different community than the rental unit. The company that her husband works for laid him off in March 2014 and he

secured permanent employment at the beginning of May, 2014 in the community where the rental unit is located. He is currently staying in travel trailer that he has moved from place to place.

On May 18, 2014 the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided by the tenants. The notice is dated May 18, 2014 and contains an expected date of vacancy of July 31, 2014. The reason for issuing the notice states: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The landlord testified that her husband served it by personally handing it to the male tenant on May 18, 2014 and a copy was sent by regular mail to the tenants the same day.

The landlord asks for an Order of Possession effective July 31, 2014.

The first tenant testified that parties had agreed to a new lease for a year. Several conversations took place and the landlords attended at the rental unit; the tenants were expecting to sign a new lease but the landlords did not bring one. The tenants gave the landlords 6 post-dated cheques in good faith and were ensured a longer tenancy.

After the notice to end tenancy was issued a realtor assisted the tenants with finding another place, but really only gave them a name and number to call. The tenant called and the perspective landlord asked when they needed the new unit, and the tenant stated that she wasn't sure but perhaps September 1 or October 1, 2014. The perspective landlord replied that was good because the new unit was undergoing renovations and probably wouldn't be ready until October 1, 2014. The tenant also testified that she quoted September or October because the tenants had disputed the notice to end tenancy and was awaiting the hearing or waiting to see if the landlords would grant another month or 2 through negotiations.

The tenant further testified that the rental unit has an in-law suite that the mother of one of the tenants currently resides in. The tenant's mother is currently on vacation and will be until the end of August. Also, the tenants have a vacation planned from July 20 to August 8th and the parties have booked flights and made plans with other folks. A move at the end of July will cost the tenants a lot of money.

The tenant also testified that had they known that the tenancy would not continue for another year, the tenants would have moved out at the end of February, 2014.

The other tenant testified that sometime in February he spoke to the landlord. The tenant built a big garden and the parties spoke about that and agreed to another year of the tenancy. Later, the landlord was again at the rental unit working on the plumbing and again they spoke about another year. The parties spoke on the phone again about it and the landlord told the tenant they would leave things "as is." On the 4th meeting the landlord camped in the yard of the rental unit and again stated that the tenancy would be extended for another year. The landlords lead the tenants to believe that their tenancy was for another year by repeatedly saying that and by taking 6 months worth of rent cheques. The tenant believed that the landlord's statement, "as is," meant what they had agreed on, which was another year of the tenancy.

The tenant also testified that if they had known that the tenancy would end, they would have moved before summer when rentals were still available. It seems intentional that the landlords promised another year of the tenancy only to ensure that the rental unit was tenanted right up to the summer months so the landlords wouldn't have to pay for 2 houses.

The landlord stated in rebuttal that he landlords had spoken about extending the fixed term and didn't know if they should initial or make a new tenancy agreement. She was present when her husband spoke to the tenant on the phone and heard him say that they would leave things "as is," and testified that it meant month-to-month but agreed that he didn't say that.

Analysis

The *Residential Tenancy Act* states that a landlord may not end a tenancy for landlord's use of the property until the end of a fixed term unless the tenant agrees. It also states that a landlord who issues a 2 Month Notice to End Tenancy for Landlord's Use of Property must have good faith intent to use the rental unit for the purpose set out in the notice. In this case, I find that the landlord has demonstrated the good faith intent to move into the rental unit. The parties agree that work has taken the landlords from one community to another and the rental unit is where the work is. The landlord has been living in a travel trailer and even stayed in the yard of the rental unit.

With respect to the term, the parties agree that discussions took place about extending the tenancy and the landlord eventually told the tenant that they would leave things "as is," but did not specify what that meant. That discussion took place after the fixed term had expired and was a discussion about whether or not to extend the term for another year, but nothing was signed. A verbal agreement is as binding as a written one, but is

much more difficult to prove partly because there are a lot of elements. The *Residential Tenancy Act* describes a fixed term as:

"fixed term tenancy" means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends.

In this case, the parties did not discuss or provide a specific date that another fixed term would end. Further, if the shoe was on the other foot, or if the tenants had given notice to move out, I would not be able to find in these circumstances that the landlord had a fixed term with the tenants, and I find that the notice should be upheld.

I have reviewed the notice to end tenancy and find that it is in the approved form and contains information required by the *Act*. The landlord has asked for an Order of Possession effective July 31, 2014. The *Act* states that if I uphold the landlord's notice to end the tenancy and if the landlord orally requests an Order of Possession at the hearing, I must grant one.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective July 31, 2014 at 1:00 p.m.

This order is final and binding and may be enforced.

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: July 22, 2014

Residential Tenancy Branch

